

DIVORCE MEDIATION:  
CONSIDERATIONS ON GENDER  
CHARACTERISTICS AND NEGOTIATIONS

by

Sara Himelstein

A Practicum Submitted  
to the Faculty of Graduate Studies  
in Partial Fulfillment of the  
Requirements for the Degree of  
Master of Social Work

University of Manitoba  
Winnipeg, Manitoba  
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## DEDICATION

Any major undertaking is never accomplished solely by one person. This practicum is no exception. None of this would have been possible without the generous sharing of the parents and children who permitted me to learn more about divorce mediation. The staff at the Welseley Office, the supervisor, David Curry, and the Clinical Director, Brock Colby, of the Metropolitan Family Services provided an exceptional environment that fostered the growth of this student's skills and sureness in working with families experiencing divorce.

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## ABSTRACT

Canadian society has been experiencing a rapidly escalating rate of divorce rate. Rather than signalling the end of the family, practitioners have concluded that the family undergoes a profound and painful reorganization following divorce. In attempting to facilitate this process and to minimize the pain and trauma to family members, clinicians have developed a new method of working with these families: divorce mediation.

Divorce mediation can be described as a process in which the divorcing spouses with the aid of a neutral third party, negotiate an agreement regarding the continuing care and contact with their children.

Divorce mediation, it is argued, facilitates the evolution of the new family organization while helping the adults to end their spousal relationship. To date, up to 40 per cent of families have not been able to utilize divorce mediation.

There are many factors that can lead to impasse in the negotiation process. This practicum focused on issues of gender characteristics, their impact on the mediation process and possible strategies for dealing with these potential impasses were explored.

CHAPTER I  
INTRODUCTION

Divorce emotionally is impossible; just like it is not possible to stop being involved with your family of origin, it is not possible to stop being involved with your family of procreation. Divorce then becomes a struggle to solve a problem that is unsolvable. (Whitaker, 1974)

The traditional view of divorce has been one that conceptualizes the family as ceasing to exist once the court has issued a decree nisi, the final legal divorce order. Not unlike the proceedings following an individual's death, the court process in divorce centres on dividing the "estate", that is, the children and the property (both tangible and financial). As with death, the adversarial process assumes finality. With the current rate of divorce at approximately thirty-four per cent (Eichler, 1983; McKie et. al., 1983) many experts were alarmed at what was perceived to be a growing threat to the very existence of the family. But the reality that is emerging from the families experiencing divorce and the professionals working with these families is that divorce ends the marriage but does not end the family.

Clinicians who had worked with family in the process of divorce and had frequently undergone this experience themselves (Coogler, 1979; Irving, 1980; Lohman, 1974) noted that the adversarial process was failing families seeking to resolve their divorce. These practitioners reported



that the parenting needs of the children had not been addressed satisfactorily by the court in a growing number of cases. As a result, many of these families were returning to court in what has been described as a "revolving door" syndrome (Bahr, 1981; Cavanaugh and Rhodes, 1976; Irving et. al., 1978). In addition, the adversarial process appeared to exacerbate the pain engendered by the divorce process. Rather than settling and calming families, the court proceedings actually contributed to the chaos and fragmentation of the family. In fact, the bitterness and acrimony that is frequently part of the custody battle reverberates through all the family members long after the decision of the court has been rendered.

These professionals proposed that a process other than that offered by the legal system was required if the ongoing needs of families undergoing a divorce were to be satisfactorily addressed. It was believed that the new process would encourage the two partners themselves to inter their marriage (Coogler, 1979; Milne, 1978, 1981; Gold, 1982; Froiland and Hozner, 1974). Providing this opportunity, it was argued (Milne, 1978, 1981), would enable the two spouses to "close the book on their marriage gently" (Milne, 1981), thus reducing or eliminating their psychic pain in regard to the failure of their marriage. These experts maintained that returning the decision making power for "dividing the estate" to the two parties would result in a self-ordered arrangement and agreement cooperatively achieved in regard

to the ongoing care of the children by the two parties who best knew the needs of the children. Such a mutual process of solving the problems of parenting and property should also eliminate the need of these families to return to court subsequently. The process that was developed became known as divorce mediation.

There can be little argument that divorce mediation reflects a significant shift of approach to resolving issues arising from divorce. The adversarial system has maintained a belief that a fair or just solution could best emerge through a combative mode. Representatives for each party (lawyers) fought for their respective client's position within prescribed legal rules. The legal battle resulted in a judge being able to determine a clear winner and an equally clear loser with a corresponding award in regard to children and property being made. By contrast, divorce mediation was proposing an approach that would directly engage the disputing parties in a cooperative process of developing a solution that was perceived to be fair and appropriate for both parties. That is, both parties would be winners.

While the goals that form the basis of divorce mediation are arguably an important step forward for families in the throes of divorce, divorce mediation, nevertheless, has failed over time to achieve the success that practitioners initially anticipated (Pearson and Thoennes, 1982, 1984; Pearson, Thoennes and Vanderkooi, 1983; Irving et. al.,

1978; Bohm, 1980) or initially reported (Margolis, 1973; Bahr, 1981). When mediation does not produce an agreement, the two parties are often considered to have failed with the result that they are sent back to the courtroom for judgment, almost as though it were a punishment for such failure.

Rather than seeking to improve the divorce mediation process, some authors (Bohm, 1980; Kressel, et. al., 1980; Irving et. al., 1979) have begun to suggest that divorce mediation may be a viable dispute resolution procedure for only carefully screened families. Recent empirical studies have reported that fully 50 per cent of divorcing partners who were offered free divorce mediation have refused such an option (Pearson, Thoennes and Vanderkooi, 1983; Pearson and Thoennes, 1983). Of the families that did utilize mediation, research has identified that as few as 20 per cent of these cases (Irving et. al., 1978) and more commonly 40 to 70 per cent have been able to achieve an actual mediated agreement that both parties consider to be satisfactory, fair and viable (Irving et. al., 1979; Irving et. al., 1981; Pearson, Milne and Ring, 1983; Bohm, 1980; Pearson and Thoennes, 1982, 1984).

While recognizing that no one approach can be a panacea, the process itself deserves further attention, specifically with a view to empowering the parties. Otherwise, there is a danger that divorce mediation's venue could simply exchange the mediator for the judge, the two parties for the lawyers and the office for the courtroom.

In doing the practicum, this writer derived a new understanding from the clients as to their reason for and experience of divorce. For these people who attempted mediation, the meaning of their marriage and divorce at its core can be described as very different from what has been generally considered in divorce mediation literature. These families, it is argued, were both struggling with and part of the "quiet revolution" (Lenz, 1988; Kaufman, 1988) in which attitudes and values regarding the nature of intimate human relations, the organization of the home and parenting may well be transformed. This social revolution may reflect itself in divorce mediation as issues of control, equality, gender and resulting social relationships.

In response to this critical social change that is being defined by and reflected in the family, a systemic approach to mediation was brought to bear in the practicum. The purpose of this practicum was to gain greater expertise in providing a cooperative setting in which divorcing couples could begin to reorder their relationship as parents. The view taken here was that family could be best defined by the function of parenting rather than marriage (Bohannon, 1984). To this end, strategies were drawn from crisis theory (Parad, 1965, 1975; Rappaport, 1965), transition theory (Golan, 1978, 1980) and family therapy (Minuchin, 1974; Minuchin and Fishman, 1981; Madanes, 1983; Haley, 1973). Attention was also focused on considerations of the parties' relative power and differences in interpersonal sensitivity in the context of masculine and feminine values.

The strategies were designed to reduce conflict and return control to the parents in planning for their childrens' needs in the post-divorce family constellation. These were first researched and then applied in the practicum.

Divorce mediation in the case of this practicum focused solely on parenting or as it is commonly referred to, custody and visitation. The term parenting will be used in this practicum.

Before proceeding to develop intervention strategies for divorce mediation, it is important to review factors in marriage and divorce that impact on the divorce mediation process. Such a review is germane as it allows a clearer understanding of the context in which negotiations occur. Socially and economically, women are becoming more accepted in the workplace in an expanding number of areas and positions. As women move into the workplace, men, in turn, are beginning to assume more responsibility within the family. These social changes are propelling the family to change its structure and organization. The historical background to this change in how men and women view marriage must be understood if divorce mediation is to be able to offer a truly new means of resolving marital dissolution.

## CHAPTER II

### MARRIAGE

Throughout human history, there has been a rich diversity in the existing forms of marriage and of the family. Family has flourished in the form of household, tribe, clan, commune or stem family to name but a few (Ms., 1978). These family prototypes have co-existed, disappeared and reappeared over time and across cultures. Each of these types of family have reflected differing values and assumptions regarding power and control that men and women exercise as marital partners, parents and as members of the wider society. Most cultures place the power and control of the family with the male. The form of the family is derived from, and in turn shapes, the social organization of the respective culture.

Historically, religion was the repository of law and as such defined and determined the rights of the parties in marriage and divorce. Modern Western society, of which Canada is an example, has derived its family form from that of the Judeo-Christian heritage. Within this tradition, women and men have had very different powers and control both in family life and society during the past 3,000 years. Generally, it can be said that men have had the control and power in matters of marriage and the family. The only culture that did not operate under rules of paternity were those that did not recognize biological fatherhood (e.g.

pre-European Hawaii). There has only been an effective challenge to this order in the past few decades for Canadian men and women. A brief historical review of marriage and the family is needed in order to clearly understand the extent to which this historical "baggage" and the new social order can effect the mediation process and outcome.

Ancient Jewish tradition permitted polygamy. The term itself indicates the fact that men were in control of marriage as the men chose the wives. Only religious law determined the number of wives. Here again the social order and power were clearly stated as male commoners were allowed four wives, while kings were allowed a thousand wives. There was, however, no limit on the number of concubines any man could have. Economic prowess alone determined this limit. Women by contrast could only have one husband regardless of rank and there was no provision for a counterpart of concubines. Wealth in this society devolved solely on men: father, husbands or adult male children. Children were also the property of the father/husband. The control and power in marriage clearly was vested with men and not with women.

Although marriage was solemnized in a religious service, divorce was permitted. Again, it was only permitted to men. For a man to divorce his wife, he had only to inform her of his intentions by handing her a divorce decree. The wife could not refuse to accept it. Children remained with the

father. Orthodox Jewish women could not and still cannot initiate divorce unilaterally as do men. Only since medieval times have women been given the right (by men) to petition the rabbinical court in their area for divorce. However, much like current abortion proceedings, it is the men, here the rabbis, who have the power and right to decide whether the arguments and pleas that the wife has put forward convince them that a divorce is in order. If the court refuses the woman's petition she must remain in the marriage as long as her husband continues to want her.

As noted, property acquired in the course of the Jewish marriage, including all children born in the marriage, belonged to the male. Inheritance was passed through males directly descendant from the fathers. Men's control and rights to property were so pervasive as to continue even after the man's death where there were no male children. Should the husband die prior to fathering a male child, his wife was required by law to marry the brother of her husband. The first born male child of this union was considered for legal purposes to be the dead man's son and as such inherited his father's property and wealth. Again, the woman could not refuse such a marriage; only the male (brother-in-law) had such a prerogative.

In such a social arrangement, women had little if any control of their private lives. Women's work was expected to be fully given to the husband and the family. The ideal wife was described as follows:



She obtains wool and flax and makes cloth with skillful hands . . . She rises while it is still night, and distributes food to her household . . . at night her lamp is undimmed. She puts her hands to the distaff and her fingers ply the spindle . . . She fears not the snow for her household; all her charges are doubly clothed . . . She watches the conduct of her household, and eats not her food in idleness. (Proverbs, Chapter 31)

However, she had no control of any wealth or of the value of her work, thus maintaining her dependence.

The economic and social facts of dependence were transformed by religious and secular theorists into the belief that women required the "protection" of men and that marriage provided this protection.

With the ascendancy of Christianity and of the Catholic Church, there were two significant changes in regard to marriage. Marriage became monogamous and divorce was not permitted to the man, let alone the woman. In addition, women had to formally promise to be obedient to their husbands but there was not a reciprocal injunction on men.

A marriage could be terminated only if it could be proven to an ecclesiastical court that the marriage had been invalid from its inception. Once again, this avenue was less open to women. As few women were taught to read or write (Scanzoni, 1979) it would be very difficult for them to provide the evidence or argument that would satisfy such a court, nor would they generally have the wealth to permit them to undertake such an action through others. As

with the Judaic tradition, wealth of all types and children belonged to the man and their rights were unaffected by behavior.

As the Protestant movement arose, divorce became available as a private arrangement (Brown, 1982). Brown does not report if the divorce was at the man's discretion and what obligations, if any, the spouses had in regard to the children or to each other for support. In England, Henry VIII had dramatically ended Papal authority and established the right of divorce for kings at least. Again, divorce remained a male prerogative and there were no corresponding changes in the rights of women. Women continued to have no rights or control of property or say in the spheres of religion or state except for the reigning monarch. However, even with such exceptions, power for women had its price. For Elizabeth I to retain power in her own right, she had to forego marriage and a direct heir.

Even with divorce as a private decision, the right to remarry in European Protestant countries remained a prerogative of religious male courts (Brown, 1982). The party suing for the right to remarry had to prove that there had been just cause for the divorce. It was the court which determined which party was to be blamed for the failure of the marriage. The religious court could refuse the guilty person, man or woman, the right to remarry, especially a paramour (Brown, 1982). England

elected a different procedure. Until 1852 divorce could be granted solely as an act of the English Parliament, again a male institution elected solely by men. A request for divorce had to be brought forward as a private member's bill which required that the bill be passed by a majority vote of the parliament (Brown, 1982; Canadian Law Reform Commission, 1975). In effect, divorce continued to be permitted only to the very wealthy male members of society. For women who could not vote and did not have money, the possibility of seeking a divorce remained in reality, illusory. Canada as an English colony and member of the Commonwealth, followed the English law.

Against this long historical backdrop of control in marriage and the family being firmly vested in men, it is not surprising that the judicial process in England and its colonies, as it began to deal with divorce, continued to enshrine the patriarchal nature of marriage and divorce. The first British legislation on divorce was proclaimed in 1857. From its inception, English law established a dual standard for husbands and wives. In regard to adultery, a man had only to have "reason to suspect" his wife as a basis for divorce. A woman had to prove her husband guilty of adultery by the rigorous standards of guilt as defined in criminal proceedings (McKie et. al., 1983). As for cruelty, a new ground introduced in 1857 for divorce, one only has to recognize the historical struggle of women to be protected from battering in marriage to date to

understand that this ground was in reality extremely restricted.

A woman found to be the party responsible for the divorce as a result of marital misbehaviour had no claim to any alimony or maintenance (Hahlo, 1975). Men who were deemed to be the guilty party did not suffer any loss of property. Although they could be ordered to pay support to their wives, these orders were rarely enforced. Children continued to be the property of men. The English court could prohibit remarriage of the guilty party for a set period of time or from marrying his/her paramour permanently (Law Reform Commission of Canada, 1975). Even for women who were found to be the aggrieved party at the ending of the marriage, the result could be disastrous both financially and socially. If today's rate of non-compliance by men in regard to an order for alimony and/or support is any indicator of the situation in England 130 years ago, women would not be much better off even when they were exonerated at the trial.

Canada retained the British divorce code of 1857 more or less intact until 1968 when the first Canadian unified Divorce Act was proclaimed. As such, it would seem likely that Canadian women generally shares the same experiences as those described in Britain.

Male domination of colonial public life suggests . . . that men were less shy of the authorities than were women, better able to stand adverse publicity about their marriage without risking their

entire reputation, significantly more independent economically and better equipped than women to pay legal expenses. A man could also take the initiative in acquiring a second spouse. (Cott, 1976, p. 594)

In short, men continued to have greater access to resources and to the power that these resources could buy. Husbands continued to be in a far better bargaining position than wives when considering divorce (Scanzoni, 1979).

The move from a religious to a secular body as the source of decision making in regard to marriage and divorce had in reality not brought much of a change in the conceptualization of marriage, divorce or the family. Only the official body ruling on divorce had changed from the church to the court, but it remained totally in the hands of men.

When marriage in North America was analyzed by social scientists, the maintenance of the power differential between men and women in marriage was underscored. Alexis de Touqueville (1840) had observed that:

In America the independence of women is irrevocably lost in the bonds of matrimony; if an unmarried woman is less constrained than elsewhere, a wife is subjected to stricter obligation . . . The Americans . . . require much abnegation on the part of women, and a constant sacrifice of her pleasures to her duties which is seldom demanded of her in Europe . . . Nor have the Americans ever supposed that one consequence of democratic principles is the subversion of marital power . . . (de Touqueville, 1840, pp. 212-213)

Similarly, a century later, Durkheim (1951) noted that:

. . . the regulations imposed on the woman by marriage are always more stringent (than those imposed on men). Thus she loses more and gains less from the institution. (p. 271)

The psychological theorists were no less hesitant in determining men's and women's natures. Freud argued that women's personality and place in society was determined by her anatomy. With the discovery in early childhood by the girl that she had no penis, she concluded that she had been castrated and was thus inferior to boys (Freud, 1956). At puberty, with rising sexuality, this issue of inferiority re-emerged. The problem was resolved when the young woman assimilated this inferiority into a growing readiness to be defined by men and her biological destiny of bearing children. Freud's theory has repeatedly failed to be confirmed when empirically tested (Weisstein, 1971). Notwithstanding, Freud's thinking has continued to dominate much popular and clinical thought regarding men, women and their respective roles in marriage, the family and society (Friedan, 1963, 1968).

Erickson (1964, 1968) in developing his normative stages in the individual life cycle argued that women could only gain their identity as defined in her attractiveness and in the selectivity of her search for the man by whom she wishes to be sought and her "inner space" that makes child bearing and child rearing her destiny. This

biological destiny, Erickson argued, could be recognized even in children under the age of five, not just in their physical organs but as a total organizing force of behavior. It is in the products of play that Erickson finds proof of his theory (Erickson, 1964). Although Erickson had noted differences in male and female development, for women these are not reflected in his final formulation of developmental stages. Bettelheim (1965) when commenting on women and the workplace takes the position that as much as women might want to be good scientists and engineers, "they want first and foremost to be womanly companions of men and to be mothers" and that this is an outgrowth of anatomy.

This Freudian and neo-Freudian theory has dominated much of clinical thinking, particularly in North America where it had arguably been raised to the level of a social belief system. As such the psychological theorists had argued that women should necessarily have less power and less say in marriage except when performing their duties of nurturing children and husbands. In the wider social and economic world this conceptualization may well be argued to be the basis of power playing and restricted work options for women (Friedan, 1968).

The psychological understanding of men and women was further legitimized by Parsons (1951). Parsons observed that men were largely to be found in the workplace and

women were generally in the home. Parsons concluded that this was a natural and functional division of work. He concluded that men embodied the instrumental function and women the expressive function. As such, the division of these functions was appropriate and provided a realistic reflection of the duality of work and love in society. Rather than seeking a point of balance of work and love, this division was the basis and determining factor in appropriate roles and functions of the sexes.

Within this concept of marriage and the family as defined by legislators and experts, Bernard (1971, 1976, 1968) argues that considerable well authenticated research has demonstrated that there were and are actually two marriages in every marital union, a "his" and a "hers" and that these two realities do not always coincide. When researchers have posed identical questions to husbands and wives about their marriage, there has often been a measurable difference in their replies (Bernard, 1968; Eichler, 1983). When studying couples who describe themselves as happily married, Locke (1951) found husband-wife agreement on family matters was reported by fewer wives than husbands on 10 out of 11 items. Gurin et. al. (1960) found that more wives than husbands reported marital problems and that both spouses identified the husband as more frequently being the source of discord. Similar findings are reported by Renne (1970) including the fact that more



wives than husbands were unhappy in their marriage and were contemplating separation and/or divorce. "These findings on the wife's marriage are especially poignant because marriage in our society is more important for women's happiness than for men's" (Bernard, 1971). Burgess and Wallis (1953) concluded that wives have to make the greater adjustment to marriage. These researchers posit that men expect to maintain their routine without change after marriage and that both men and women concur on this point. Thus, within marriage as it has been idealized and lived, there has been:

1. unequal power relationship between men and women in which women are at the bottom, and
2. the women's position (has remained) as a legal domestic in the home  
(Women's Caucus of the Radical Caucus of the American Psychiatric Association, 1969)

Thus modern marriage, although based on secular scientific beliefs rather than religion, has perpetuated marriage as a very unequal institution with men retaining a marked advantage in power and hence control of the family.

At the same time that the marriage and family had become enshrined as psychologically desirable and necessary for women, social changes were occurring that irrevocably affected this tradition. Over the past 70 years women have gained many important rights: the right to vote, to own property, rights in their marriage, to work outside the home and keep these earnings for

themselves, to name but just a few. These rights have not come easily and women have had to and continue to need to demand that these changes continue. The movement to equalize women's opportunities in the workplace through such programmes as affirmative action, pay equity and provision of day care services while in their infancy have enabled women to take on an increasingly diverse range of employment opportunities. Women are beginning to work towards a new balance of work and family and this trend is unlikely to stop.

The same impetus for change, it is argued, has also found its way back into the realm of marriage and the family. Working women are increasingly demanding and needing to have their work at home valued and shared by men. The fact that women are working requires that men become more involved within the family. While women typically still carry more than 50 per cent of the responsibility for the home even when they work, men are beginning to assume a growing portion of these responsibilities (Eichler, 1983; Bohannon, 1981) especially in regard to child rearing. As Winborn (1983) notes, there is a movement toward egalitarianism.

These changes give rise to a different understanding of marriage and the function of men and women within this institution. Marriage itself as it has been developed may not meet the present needs of many men and women. This growing discontent with the current institution of

marriage, it is argued, may be evidenced by the dramatic increase of divorce. These changes are being enshrined in the new laws of divorce. It is only since 1968 that Canada has recognized the concept of no fault divorce. Recognition of women's work within the marriage as an economic contribution was not formally recognized until the Rathwell case of 1978. In this landmark case, the Supreme Court of Canada ruled that women were to be considered as equal contributing partners within marriage. They were, therefore, entitled to 50 per cent of all property accrued in the marriage. Increasingly, these rights are reflected in legislation such as the Marital Property Act in Manitoba. Parenting has undergone a similar change. Women were recognized as the main parents after divorce for the past 50 years (1920-1970's). There is a steady movement to recognize fathers as equally important to children. These changes are also being reflected in a parallel movement in the legal system for a preference toward joint custody. All of these developments are likely to have major impact on the institution of marriage and its dissolution.

## CHAPTER III

### DIVORCE

In addition to the complexities arising out of the changing dynamics in marriage, the divorce mediator must also understand the process of divorce as it impacts on the family and especially the adults. A review of the psychology of the divorce process will permit the identification of issues and complexities that need to be addressed if mediation is to succeed in providing the family with its initial scheme for family life after the rending of the spousal relationship. A critical review of current understanding of the divorce process will introduce some needed reconsiderations regarding the existing linkage of mediation and divorce.

Clinicians who have worked with couples and individual adults in the midst of separation and divorce have delineated the process in greater detail (Framo, 1980; Gold, 1982; Irving and Irving, 1974; Irving, 1980; Kaslow, 1982; Napier, 1977; Ricci, 1981; Wallerstein and Kelly, 1980; Weiss, 1975). The increased understanding of the adult experience has resulted in a clearer and considerably more complex picture of the divorce experience for the parents. These clinical descriptions have affirmed that the marital relationship ends with the formal separation or divorce but that the family continues. There is growing confirmation that divorce results in the transformation of

the family from a nuclear to a binuclear unit when children are involved. That is, the family undergoes major structural changes from a two parent/spousal home to a family having two homes, each with one parent (Ricci, 1981).

At the same time, divorce is no longer perceived as a unified event marked by the divorce decree. Rather, it has been well established in the clinical literature that the process of separation and divorce has many components. Brown (1982) has described the process of divorce as involving five components. For Ricci (1981) there are eight components that span the divorce process from the period of difficulties in the marriage to the establishment of a new lifestyle for each adult. Goode (1956) has thoroughly detailed divorce as it affects women's lives, particularly after divorce. Kessler (1975) presents a seven stage analysis of the divorce process, while Wiseman (1975) argues that the divorce process involves five stages of emotional crisis that the adults must resolve positively if they are to achieve a healthy resolution of this experience. Froiland and Hozner (1977) and Johnson (1977) have likened divorce to the process of dying. If divorce is to be resolved, appropriate mourning and grieving must take place. Gold (1982) offers a similar understanding of divorce and suggests that mediation can be considered to offer the opportunity of constructively resolving the necessary mourning of the marital relationship.

Bohannon (1970) has described six "stations" of divorce that have been generally accepted by other researchers and clinicians. This research suggests that the first stage is best termed "emotional divorce". Emotional divorce includes the pre-separation process of deciding to leave the marriage thus ending the marriage on many levels. The legal divorce is the actual court proceeding terminating the marital relationship and establishing the couples' eligibility to remarry (McKie et. al., 1983). Bohannon notes that where "grounds" need to be furnished, this painful process of legal divorce is greatly exacerbated. The division of property, money settlements and support are all viewed as part of the economic divorce rather than the legal divorce because these aspects of resolving the family finances vary from area to area according to the law of the province. Co-parental divorce and the problem of custody is the fourth station of divorce. In this station, parents must make arrangements for the continuing care of the children. Bohannon uses the term co-parental divorce to indicate that the adults are divorcing but that the parenting continues. Other aspects of the divorce relate to changes in one's role and place in the community subsequent to divorce. Bohannon has termed these two aspects as the community divorce and the psychic divorce. In the community divorce stage or station, the individual is confronted with an alienation from the former friendship network to the establishment of

a new social group developed as a single person. The psychic divorce is the last stage and its resolution is indicated by the positive development of a new independent lifestyle.

While these descriptions of the divorce process may afford the practitioner with a more complete understanding of the stages in the experience of divorce, it is important that these stages or stations must not be perceived as a smooth or unidimensional smooth flow from one aspect of divorce to another. The experience of those who have undergone divorce indicates that the progression from stage to stage is not smooth or orderly and that there is likely to be rapid movement backward and forward within these stages (Ricci, 1981; Trafford, 1982; Donley, 1979). Gold (1982) and Brown (1981) have underlined the finding that the process may be very different for the initiator and non-initiator as a result of the preparedness for divorce that the individual has accomplished.

Another aspect that must be considered and that has generally not been reviewed by clinicians, has been the differential impact of divorce on males and females. Generally, these stages have been presented as being the same and having the same impact on both sexes. There has been very little effort in the clinical literature to examine if there are any differences between men and women as they undergo divorce. In reviewing empirical literature in this area, a very different, if parallel process

and experience of divorce emerges for men and women.

When considering divorce as it relates to physical and mental health, Holmes and Rae (1967) in their classic study note that divorce can be a potentially life threatening event for men. Subsequent studies (Ortmeyer, 1979; Bloom et. al., 1979; Ladbroke, 1977; Verbrugge, 1979) have supported the finding that divorced men have a significantly higher mortality rate than do their single, married cohorts or women regardless of marital status. Women who have ended their marriage are statistically more likely to develop physical problems that require hospitalization. These findings are reported to hold true when divorced women are compared to married women cohorts. Women seek counselling and physical care more actively than do their male counterparts subsequent to separation and divorce (Bloom et. al., 1979; Verbrugge, 1979; Wallerstein and Kelly, 1980; Kitson and Sussman, 1979). Despite this help, Verbrugge (1979) contends that many of these women live quite constricted lives subsequent to divorce. These findings are consistent with those reported by Goode (1956).

Even when such dramatic levels of distress are absent, divorce remains a major stressor for both parties. For men and women, divorce involves disruptive changes in residence (Fulton, 1979). Both men and women experience social isolation. Women report that they experience a loss of social status and their social support group. In



addition, divorced women report being taken advantage of and socially stigmatized more frequently than men (Kitson et. al., 1980). For many women the social isolation can be debilitating (Hetherington et. al., 1979).

Both parents experience great stress in adapting to their changing parenting role. For men, their generally lessened involvement in their children's lives subsequent to the marital rupture has been identified as a source of emotional distress (Ahrons, 1981). Divorced women frequently must learn to assume an increasingly larger share of parenting on their own. Research has documented that mother-headed households experience a high degree of conflict between the mother and the children as they adjust to the new family pattern (Hetherington et. al., 1979).

In the last decade the deleterious effects of stress on human performance and social behavior have been well documented (Cohen, 1980). Highly stressed individuals, relative to non-stressed persons, have been found to be impaired, in their cognitive flexibility, problem solving skills, and tolerance for frustration and ambiguity. Highly stressed individuals have shown generalized decline in sensitivity towards others, including reduced willingness to help and an increased tendency toward aggression. These decrements are most pronounced when the stressors are both unpredictable and beyond the control of the individual. When considering the number and types of

stresses on divorcing adults it is very likely that these same decrements will be found in this population. The implication for divorce mediation is very serious. Successful negotiation requires just the qualities that high stress impedes.

When considering the impact of the economic divorce there is again a marked difference between women and men. It has been reported that for most women there is a tremendous drop in economic status (Kitson and Sussman, 1977; Kressel, 1985; Ms., 1988; Lamb, 1987) often bringing women below the poverty line (Lamb, 1987; Statistics Canada, 1979). Women-headed households are vastly over-represented in the welfare roles. Women are still typically paid almost 60 per cent less than their male counterparts. If they become self-sufficient after divorce, they are likely to earn considerably less than the salary of their husbands. Women often have sole custody of the children of the marriage. Even when court imposed support is ordered for the children, these orders are frequently not honored by the fathers. By contrast, men's disposable income climbs subsequent to divorce (Lamb, 1987). Thus the economic station of divorce can have very different impacts on men and women and may post a serious barrier for women which cannot easily be overcome.

It is important to note that the meaning of money and financial security differs for men and women. Bloomfield and Swartz (1983) found that money was related to identity

and power while for women it represented security and autonomy. These factors must be understood when divorce mediation is attempted. When solely focusing on mediation around custody and visitation as in this practicum, the impact that may flow from this one aspect of divorce concerns to parenting plans cannot be underestimated. In fact, when such issues are submerged they may sabotage efforts in regard to custody and visitation planning as this aspect of conflict may be obscured and hence, unattended.

The co-parental divorce requires further amplification. During this stage or station, as already noted, the couple renegotiate their ongoing relationship while dissolving their marital bond. It is this parental relationship that is central to the mediation process. The large number of studies that have reported the ambivalence, distress and emotional turmoil confronting couples during this stage (Ricci, 1981; Wolley, 1979; Chiraboga et. al., 1983) suggest that reorganizing the co-parental relationship may be extremely difficult. Hetherington et. al. (1979) note that tensions between parents and children as well as the discord between the two parents are at their highest during the first year following divorce. Thus a positive resolution of the co-parental station is very difficult to complete. Everett and Volgy (1983) argue that this process of reordering the relationship of the parents does not end the family process but that instead the family is reshaped

over time into a new enduring parent subsystem. Frequently, this adjustment is further complicated for the two adults and children with the remarriage or entry of a new partner for one or both parents. With the remarriage rate at 75 per cent for men and 66 per cent for women within two years of divorce, the co-parenting relationship must continue to evolve and surmount these additional challenges. It is not uncommon for the parents who attempt mediation to be involved with new partners who have their own expectations and demands regarding the new family constellation. These people as interested third parties are likely to have considerable impact on the mediation process.

Another area in which men and women appear to differ somewhat is in their understanding and response to divorce. In their research, Kitson and Sussman (1979) found that the men they interviewed tended to report a lack of understanding regarding reasons for the end of the marriage. The majority of women interviewed indicated that they chose to end their marriage because they had found they were not allowed or encouraged to be fully independent people or that the marriage lacked the degree of intimacy they wanted (Kitson and Sussman, 1977). These findings for women suggest that women currently have very different reasons for ending marriage than they did a generation ago. Goode (1956) found that most of his sample indicated that alcohol abuse, violence and lack of financial support were the main reasons for women seeking divorce.

Krantzler (1969) suggests that the equality and intimacy in a relationship (other than sexual) is becoming increasingly important in North American marriages and the absence of these factors is currently the basis for most divorces.

Everett and Volgy (1983) suggest that the changing social norms and expectations of men and women contribute to the difficulties in establishing a mutual and satisfying marriage relationship. These practitioners suggest that society continues to idealize motherhood for women and simultaneously encourages women's participation in careers. Men are similarly encouraged to participate more actively in child rearing along with their traditional work role. For some couples, Everett and Volgy (1983) argue the changing demands result in divorce. An alternative explanation is that as women become less dependent on men as the "bread winner", the traditional marriage fails to meet many women's needs. Men may not want or be prepared for the changing social expectations as expressed in the changing role of women. Eichler (1983) based on empirical research has noted that middle class men and women ascribe to a view of equal responsibility regarding child rearing and household duties. However, in actual practice women continue to carry the major responsibility for the home and children. As they become financially less dependent, women are less satisfied with the status quo. More recently, Lamb (1987) supports these findings. Brown et. al. (1976)

based on interviews with women who have divorced, suggests that there is growing dissatisfaction with current marriages among women as they begin to achieve greater autonomy. It must be remembered that the changes in employment and at home have resulted from womens' demands and not because men had chosen these changes. Priviledge is not easily ceded.

There has been relatively little discussion of divorce in terms of its meaning in the family life cycle. McColdrick and Carter (1980) have reviewed the developmental life cycle of families indicating that each new stage of the cycle is experienced as a crisis. These normal crises require that family members renegotiate their involvement with each other and their community as the family enters each new stage. The first normal life crisis or stage of marriage requires that each individual negotiate with the other a means of developing a joint life as a couple in relation to family, friends and the community, with each partner retaining his/her own independence and identity. The birth of a child marks the next stage. At this time, the couple must negotiate their respective parenting roles. Winborn (1983) notes that at present, there is a large range of options from traditional to egalitarian parenting. However, the responsibilities of parenting require shifts in the couple arrangement and also new negotiations with friends and family. Raising young children from infancy to adolescence requires several

more changes as the children move toward greater autonomy. With the launching of children to their own adult independence, the couple must renegotiate their own intimate relationship and their new role as grandparents as well as their withdrawal from the labour force. Finally, with the death of one partner, or with divorce, the other partner must negotiate a single life. Divorce is seen here as a variation on the normal life cycle. These normal crises intersect with an individual's developmental stages.

Clearly, divorce at any one of these junctures, both for the individual and the marital dyad, will result in considerable differences in terms of the individual experience and meaning of divorce. Stressors such as the birth of a defective child, loss of employment, death of a parent, alone or in combination, if coupled with one of the normative crises, may so overwhelm a couple as to result in divorce (McColdrick and Carter, 1980; Kaslow, 1981). The meaning of divorce in such cases to each adult will again differ from those described by Gold (1982), Brown (1981), Ricci (1981) or Wooley (1979) because of his/her unique situation. The meaning of divorce will also differ for the family as a system in these situations. The child's response to the parental divorce will have considerable impact for each parent. Since McColdrick and Carter (1980) utilize a systems theory, they can also recognize the mutual and continuous interchange between and among family members over the lifespan of the family.

Utilizing the systems theory approach (McColdrick and Carter, 1980; Whitaker, 1974; Everett and Volgy, 1983; Madanes, 1983; Esses and Rachlis, 1979) offers a firm theoretical basis that divorce does not end the family. It also provides an understanding and recognition of the complex mutual, circular and reciprocal nature of family relationships (Everett and Volgy, 1983) over time. The insights and considerations that arise from a systemic analysis will be dealt with in the section focusing on family therapy interventions and their possible application to barriers in the mediation process.

To some degree, Wallerstein and Kelly (1980), in describing divorce and its aftermath, have tried to look at divorce in a developmental context. Their focus has been on children. The meaning, experience and coping utilized by children at each developmental stage is explored. However, the way in which the child's experience interacts with and affects the parental experience, has not been explored extensively. To their credit, Wallerstein's and Kelly's exploration of the impact of divorce includes both the distress and dysfunction as well as the positive adjustments that are possible for families. This practicum focuses on the mediation process between the two adults. As a result, the experience for the children in regard to this process has not been developed. The role of children in mediation and the impact on the children of this process would be two important areas for other studies.



CHAPTER IV  
DIVORCE MEDIATION

Currently in Canada, one in three first time marriages will end in divorce (McKie et. al., 1983) and these same statistics suggest a growing rate of divorce at least over the next decade (Eichler, 1983). Ahrons (1981) reports a divorce rate in excess of 50 per cent for second and third marriages. As already noted, these figures have not signalled the end of the family. Divorce statistics, it is argued, do signal a profound systemic change in the understanding and meaning of marriage. This revolutionary change of values has, and will continue to have, critical impact on the family in the way the family functions and the roles and relationship of and between its members.

In response to this large scale phenomena of divorce in the general population, society has had to begin altering its attitude to divorce. The newly emerging change of values underlying marriage can be said to be at the heart of the movement away from ascribing blame or fault to one of the parties as the main basis for granting divorce. It is only in the past two decades that the concept of no fault divorce has been enshrined in law (The Canadian Divorce Act, 1968).

With this basic change in the understanding of divorce both legal professionals and social scientists have been increasingly disillusioned with the legal procedure as the appropriate means of ending a marriage (Cavanaugh and

Rhodes, 1976; Coogler, 1979; Folberg, 1981; Irving and Irving, 1980). These practitioners began to develop an alternate method of ending the marriage that could reflect the reality that the family would continue and that could simultaneously facilitate the difficult transition from the nuclear family to the newly emergent family forms (remarried families, blended families, bi-nuclear families, to name but a few).

Clinicians, who have long ascribed high value to self-determined solutions of personal problems, began to extend this same notion to divorce. Where before custody and access were solely decisions of the court, these decisions were in large part determined through an evaluation of the relative strengths of the two parents by an expert clinician. These same practitioners began to recognize not only the right but rather the appropriateness of these two parents to continue to plan for and parent their children, where there had been no question as to their effectiveness as parents prior to the marital breakdown. Indeed, it has been frequently argued (Ahrons, 1981; Wallerstein and Kelly, 1980; Wooley, 1979; Hetherington, Cox and Cox, 1979) that children need both parents to be closely involved after divorce if they are to be able to make a healthy adjustment to their parents' divorce. Family theory and its practitioners have stressed the importance of a strong parental subsystem as critical for normal development of children. Divorce mediation was

developed as an attempt to provide a forum in which these seemingly diverse elements of uncoupling and continued parenting could be addressed and resolved.

Divorce mediation developed out of two main approaches. The first major basis of divorce mediation developed out of a growing understanding of the divorce process and its impact and demands on the two parties (see Chapter III). Secondly, mediation has long been used as a form of conflict resolution in labour and international disputes. As conflict and conflict resolution were studied in the laboratory (Deutch, 1973; Rubin and Brown, 1957) a new understanding of the psychological factors and social variables that were part of conflict and its resolution became more clearly identified. In addition, the research (Deutch, 1973; Rubin and Brown, 1975; Uri and Fisher, 1981; Kressel et. al., 1980) in the area of conflict control and resolution identified the elements and some of the techniques that would transform adversarial styles of conflict resolution into more productive, constructive and cooperative forms of conflict resolution. These findings were brought to bear on an analysis of divorce conflict.

Divorce mediation can be described as a process in which the divorcing spouses with the aid of a neutral or third party, negotiate an agreement regarding the continuing care and contact with their children, and in some cases, the financial matters as well. For purposes

practicum, the divorce mediation dealt solely with arrangements for the children. Negotiations may include individual sessions between the mediator and each client but sessions in which the two partners negotiate directly with each other predominate. Within this context, the mediator's task or objective has been considered to be the establishment and maintenance of a cooperative, problem solving orientation between the two parties. Within this broad objective, the mediator must ensure that all the substantive issues are addressed.

In establishing a productive negotiating climate, the mediator's principal functions must include facilitating accurate and honest communication; seeing to it that anger and hostility are kept within manageable bounds; promoting in each party a feeling of confidence in the process and in their respective abilities to use it to attain their most significant objectives; reminding the parties of the needs and perspectives of their children. To achieve these desired objectives, the mediator must often inculcate each party in at least the rudiments of constructive negotiations--principally in the form of a recognition of the need for compromises and trade-offs and the value of attention to the other's need for compromises as well as one's own.

The factors or obstacles that can frustrate the search for a constructive settlement in divorce negotiations appear to be the same obstacles that are encountered

in other arenas of mediation. Kressel (1985) has identified nine obstacles to a constructive negotiating experience:

1. High levels of interparty conflict
  2. Well-established and rigid patterns of destructive interaction
  3. Inexperience in the art of negotiating
  4. Scarcity of divisible resources
  5. Complex issues which threaten loss of face or self-esteem
  6. Elevated levels of stress and tension
  7. Social norms and institutions for conflict management that are weak or that unintentionally provoke destructive interaction
  8. Disparities in the parties relative power
  9. Disparities in the parties degree of interpersonal sensitivity
- (Kressel, 1985)

The presence of any of these nine factors increases the prospect of difficulty in the negotiation process. In varying ways and to varying degrees, these factors tend to impair communication, inhibit decision making, and discourage parties from defining the negotiations as a cooperative effort with mutual or compatible objectives. In considering divorce and its likely effects on each party as it unfolds it may well be the case that all the obstacles are present.

It is important to recognize that the last two obstacles described are closely associated with the male-female context in which divorce negotiations occur. In divorce negotiations, one negotiator is always a man, the other always a woman. In considering the differential experience in marriage and divorce for men and women, the

disparities in relative power and interpersonal sensitivity between men and women cannot be ignored in divorce mediation. Presently, divorced women are generally dependent on their husband's continued support to remain above the poverty line (Chambers, 1979). This power imbalance may have increased, paradoxically enough, by changes in the law and the prevailing social climate favoring greater equality between the sexes. While present "no fault law" also requires the equal distribution of marital assets in divorce, the effect on settlements in or out of court has resulted in a dramatic reduction of the woman's share of marital property (Dixon and Weitzman, 1980, 1982; London, 1988). Alimony and child support awards have also decreased (Seal, 1979; Lamb, 1987).

Divorce mediation which focuses on custody and visitation disputes has in part attempted to eliminate this source of friction by excluding financial settlement from the negotiations. By contrast, focusing on achieving a good parenting agreement has been seen as a domain that encourages cooperation since both parents have a real interest in wanting to help their children. However, this approach may in fact inflame conflict because financial concerns may bear a hidden agenda that undermines constructive bargaining. These considerations are beyond the scope of this practicum but raise important questions for future research and practise.

Criteria of a constructive (successful) settlement process have been drawn from diverse sources within social psychology. The main sources reviewed included clinical research in marital conflict, intergroup conflict (Bach and Wyden, 1968; Deutch, 1973), research on bargaining and negotiation (Rubin and Brown, 1975; Kochan and Jick, 1978), as well as understanding gleaned from conflict theory (Coser, 1956; Deutch, 1973).

These criteria of successful negotiations include the development of a cooperative orientation to the negotiating encounter. The two parties come to define the task as a cooperative effort to achieve mutual or compatible goals. It has been reasoned (Deutch, 1973; Rubin and Brown, 1975) that the cooperative orientation produces greater satisfaction and an increased willingness to compromise with a better joint outcome. Both of these are accompanied by positive feelings and more accurate perceptions of the other party than is produced by a competitive or individualistic orientation to the conflict. In considering divorce mediation there are many potential shared objectives such as protecting the welfare of the children, minimizing legal costs, lessening the hostility between the parties, all of which are viewed as the basis for cooperation (Coogler, 1979; Irving, 1980; Haynes, 1981; Ricci, 1981).

Deutch (1973) has demonstrated that if a cooperative orientation is achieved, an open style of communication

will result. This style of communication encourages the sharing of all information that might facilitate each party's search for an acceptable agreement. Thus concealment or distortion of information does not typically occur under such conditions. In this climate a direct expression of anger is to be expected as a means of communicating each party's feelings or priorities that relate to formulating a viable agreement rather than a means of inflicting punishment (Kressel, 1985).

Sensitivity to common interests and similarities expressed through neutral or conciliatory actions are common when each partner negotiates from a cooperative conflict modality and this is, in turn, correctly perceived by the other party. A tendency to attribute legitimate or even positive motives to the other party's actions predominate within the pursuit of legitimate self-interest. Such a process supports a trusting if not friendly atmosphere in negotiations. A willingness to respond helpfully rather than antagonistically to the other's needs prevails. In such a climate, an open style of communication can be expected in bargaining. Sharing of information that might facilitate an acceptable agreement can be expected and concealment or distortion of information in the interest of hurting or outwitting the other is typically minimized or eliminated.

Negotiations in divorce mediation process would appear to involve a gradual shift from an initial



competitive stage in which hostility and coercion are initially displayed to the cooperative stage in which joint problem solving is present. Kressel (1985) notes that this aspect of pace or timing is the least researched of the elements of formal cooperative negotiations. Since the pacing of the negotiations is in large part orchestrated by the mediator, research in this area would be very useful in helping the mediator to discharge his/her role in a manner that enhances the possibility of a successful outcome.

The main criteria of success for constructive negotiations is the achievement of a viable agreement by the parties. Such an agreement must have resolved all relevant issues. In the case of mediation of future parenting, specified arrangements for time that the children will spend with each parent and other extended family members, including holidays, are detailed. How each parent will be involved in the child's schooling and extra-curricular activities are typically addressed so that the children's interests and needs will be met. Mediators are charged to develop a fair and equitable agreement that is perceived as such by the parties. For these agreements to be fair, they must protect the rights, interests and welfare of the children which, generally speaking, are known to the parents. It has been suggested that what will be considered a fair agreement tends to be expressed as that which is close to the prevailing norm

and community expectations. This standard, it is argued, is increasingly less useful as parents are arriving at plans that match the parties' and childrens' particular needs. Here societal standards are being revised by these families. As such, there is a clear recognition that the agreements need to be innovative, imaginative and flexible.

If the agreement reached meets these criteria both in the climate of the negotiations and for the qualities of a viable agreement detailed above, parties will comply with the terms of the agreement and post-settlement litigation and/or chronic conflict over the agreement should not occur. Theorists (Coogler, 1979; Haynes, 1981; Irving, 1980; Kessler, 1975) have argued that in addition, the mediated agreement will produce satisfaction for both parties with the overall results without either party feeling triumphant or humiliated, thus eliminating the destructive winner-loser dichotomy common in a court imposed plan for the family. Both parties should experience a sense of ownership of the agreement as the final product would represent their own best efforts and values. Finally, the appropriateness of the agreement as an outcome of cooperative negotiations should enable spouses to cooperate more and certainly not less.

Research on divorce mediation has begun to measure how well divorce mediation has delivered results as promised. That is, the question is raised as to whether mediation has been effective. All of the research has

focused on populations that have been offered or received mediation around custody/visitation disputes. Since this practicum centered solely on custody/visitation concerns, the research is directly relevant.

A consistent finding of client satisfaction with the process of mediation has been reported by the majority of persons who have tried it. Irving et. al. (1979) state that satisfaction with the mediation process was reported by close to 90 per cent of those who did succeed in arriving at an agreement. Even for those who failed to arrive at an agreement, satisfaction with the mediation process was expressed by the majority of users. Pearson and Thoennes (1982 a; 1984 a) in comparing those who chose the court process and those who utilized mediation found that 76 per cent who tried mediation were satisfied as compared to only 42 per cent of those who elected the adversarial process. In a study that involved three major cities in the United States, these findings were generally replicated (Pearson and Thoennes, 1982b, 1984b). Ninety per cent of those who reached an agreement and 70 per cent of those who did not reach a mediated settlement expressed satisfaction with the process and would recommend that others try this process. By contrast, only 50 per cent were satisfied with the legal system. The levels of user satisfaction are comparable to those reported for people seeking help for personal problems (Veroff, Kulka and Douvan, 1981) and patient satisfaction with medical

services (DiMatteo and Friedman, 1979). Cavanagh and Rhode (1976) note that one-third of their sample were dissatisfied with the legal assistance in the course of divorce and that where lawyers were relied upon heavily, that rate of dissatisfaction grew to 64 per cent.

The rate of settlements being achieved at the end of divorce mediation has generally fallen in the 40 to 70 per cent range. Irving et. al. (1978) reported an early finding of 22 per cent. However, when highly skilled social workers who were trained in mediation were utilized the success rate more than tripled (Irving et. al., 1979). Pearson and Thoennes (1984a) and Pearson, Milne and Ring (1983) report a 60 to 70 per cent success rate in which a mediated agreement was achieved at the end of mediation. A full 50 per cent of those offered free mediation have been known to reject this option (Pearson and Thoennes, 1984a). The rate of successful divorce mediation appears to be comparable to other types of voluntary mediation that have been applied to civil and criminal disputes (Kressel, 1985).

Mediation, when successful, has been able to provide a modest saving in legal costs for each couple. However, the aggregate savings on a national basis are impressive (Bahr, 1980; Irving et. al., 1981; McIsaac, 1981; Pearson and Thoennes, 1982a). McIsaac (1981) claimed a saving of \$175,000.00 for the Los Angeles courts in 1978 with mandatory custody mediation. On the other hand, for the

40 to 60 per cent who unsuccessfully attempt mediation, their costs are considerably higher than those who only utilize the legal system (Pearson and Thoennes, 1982b, 1984b). Pearson and Thoennes (1982b, 1984b) report that in longitudinal studies, those parents who could successfully negotiate an agreement report an 80 to 85 per cent level of general compliance with the agreement as compared to a 60 per cent rate for those who used the adversarial approach. However, mediated families who experience ongoing problems appear to return to court after five years at the same rate as those families who had opted for the adjudicatory model (Pearson and Thoennes, 1984a; Kressel, 1985).

As noted previously, a major argument in favour of divorce mediation has suggested that its cooperative and psychologically sophisticated approach provides a better means for improving and sustaining positive communication between family members, even after mediation, than does the adversarial approach. While those who succeeded in mediation do report an improvement (Pearson and Thoennes, 1984a) in these areas, if one includes those who attempted mediation but did not achieve an agreement, the impact of mediation on improving future family interactions drops to no greater than chance level. Forty per cent of those who did succeed at mediation experience mediation as having no impact at all on family relations. Pearson and Thoennes (1982b) found that in their Custody Mediation

Research Project sample, 50 to 66 per cent of those who were able to mediate reported no effect as a result of mediation on their relationship with the other parent. In reviewing the research, Kressel (1985) notes that a significant minority had distinctly negative reports in regard to mediation and its effect on parental interaction.

In regard to the claim that mediation offers families a more positive parent-child relationship following the divorce, the results from research are few and divided. Margolis (1973) reports that compared to the control group, mediation respondents and children enjoyed visitation more and had better behaved children during and after the visit. Pearson and Thoennes (1984a) report that there are more days of visitation for successfully mediated families than those who could not reach an agreement as well as for those who experienced the court process. A similar study on a different population (Pearson and Thoennes, 1984b) failed to find any differences between treatment groups. In this latter group, fully 40 per cent were dissatisfied with their current visitation pattern, including those who had successfully mediated an agreement. Families with mediated agreements did not have significantly more adjusted children than the comparable group who failed to reach agreement or had experienced the legal process.

Methodological considerations raise questions that may well limit the application of the findings for much of

the divorce mediation research. There are some questions in regard to the pretreatment comparability of mediated and non-mediated groups. Some studies have only selected less conflicted, more cooperatively oriented and less disturbed couples for mediation, while the more conflicted and disturbed families are assigned to control or comparison groups (Pearson and Thoennes, 1984a, 1984b; Doyle and Caron, 1979). Irving et. al. (1979) did employ quasi-random sampling but the mediation counsellors were better trained, had more flexible work schedules and smaller caseloads than their control group counterparts. The fact that 50 per cent of those offered mediation refuse this service (Vanderkooi and Pearson, 1983; Wallerstein and Kelly, 1980) although common to all types of voluntary mediation (Kressel, 1985) effectively destroys any attempt to randomly assign cases to create comparable groups prior to the introduction of the intervention. Thus, some of the positive results reported to date may be attributable to the mediation group's more favourable pretreatment characteristics as much as to the impact of mediation.

CHAPTER V  
SOME CLINICAL INTERVENTIONS  
FOR DIVORCE MEDIATION

Divorce mediation theorists and practitioners (Coogler, 1978; Irving, 1980; Haynes, 1981; Taylor, 1982) have stated that divorce mediation is not a form of therapy. Rather, divorce mediation has been presented as a voluntary dispute resolution process. As already stated, the central goal and focus of this process is to enable the two parties to arrive at a mutually agreed upon plan for the future care of their child(ren). Because of the immediate and long range pervasive impact of divorce on every aspect of each family members' life, it has been argued that the mediator in divorce mediation can serve the needs of the family best if s/he has considerable exposure in working with couples and families. Coogler (1978) argues that considerable skill in family and marriage therapy is very central to the divorce mediator's role. Practitioners (Irving, 1980; Haynes, 1981; Bohm and Goudge, 1983) have highlighted how these skills facilitate the mediation process.

Although divorce mediation is not a therapeutic technique, it is suggested (Milne, 1978, 1981) that several therapeutic benefits or gains for the family undergoing the experience of marital breakdown may well accrue from divorce mediation. The negotiations often offer the two parties their first positive experience of working together solely as parents.



As such, the mediation process has been considered an integral building block in the newly emerging co-parental subsystem (Irving, 1980; Haynes, 1981; Kessler, 1975). The agreement that is developed in this process formalizes the initial steps in the reordering of the post-divorce family. The opportunity of "closing the book on the marriage gently" (Milne, 1981) is considered important to the positive resolution of the psychological divorce.

For almost all couples in the immediate period following divorce, their interaction can probably be best characterized as being one of destructive conflict. Divorce mediation may offer an opportunity to diffuse this process. Divorce mediation has been identified (Irving, 1980) as a process that may establish or reestablish a cooperative style of interaction as parents. Successfully establishing a functional parental subsystem may aid the family to avoid serious psychological difficulties for the children. Haynes (1981) and Saposnek (1983) have suggested that mediation may be helpful in improving long-term patterns of communication between the couple and the children.

As such, this practicum focused on clinical assessment, analysis and elements of therapeutic intervention that could be borrowed from crisis theory and family therapy. These two clinical areas potentially offer the divorce mediator a wealth of clinical experience and knowledge in facilitating the two parties to achieve a viable

and fair agreement that meets all the family members' needs. The special focus in this practicum was to continue to seek approaches and develop skills for achieving cooperative communication between two parents.

Finally, this student had identified the changing family patterns reflected in marriage and divorce for men and women and its respective meaning for them. It became clear that understanding and addressing gender characteristics and values as they might operate in negotiations was likely to be critical for successful divorce mediation. Social scientists (Rubin and Brown, 1975; Deaux, 1976) have identified gender characteristics that operate when men and women interact in situations with high conflict. Gilligan (1982) has argued that the different values that have been internalized by men and women form the framework out of which each party acts on and processes information. For each sex, these underlying patterns tend to be quite different. Since these differing values and characteristics are likely to have great impact on the negotiation process in divorce mediation, these were intensively researched. Some techniques were developed to reduce conflict that would seem to arise from these sources. To date, no one has addressed this aspect of mediation.

#### Crisis Theories and Mediation

Weiss (1975, 1979) notes that divorce consists of a crisis and a transition phase. During the crisis stage,

Weiss recommends support and problem-solving as the only valid techniques when working with divorced and divorcing individuals. Individuals who have moved to the transition stage are likely to be in a situation for which they have no ready solution. "Indeed, people in transition may have difficulty in even identifying their problems, so extensive may be the disruption to their previous ways of life . . ." (Weiss, 1976, p. 216). Because separation or divorce is such a profound crisis, these individuals may not know where to start rebuilding.

Weiss's suggestions for intervention include providing the individual with a framework that orders and explains that person's experience. This concept seems to be very akin to "reframing" (Munuchin and Fishman, 1981). Another helpful intervention may be to ensure involvement with a group of other individuals who have undergone divorce. Discussion within such a group serves to normalize the experience and provides an opportunity to learn how others have managed with such a crisis. Because one's own social circle may not share this experience, a feeling of social isolation may otherwise result. Saulnier (1982) suggests that a supportive network is a critical factor in successful resolution to a crisis. Further, it may be useful in a transitional crisis to have a new social group in which to experiment and find a new and appropriate style of functioning (Saulnier, 1982).

When a mediator becomes aware that one or both parties

are in a state of confusion regarding their experience, he/she may wish to have them attend such a group led by a skilled professional, or by informed self-help groups. Mediation may be suspended until the individuals are more able to comprehend their situation in a meaningful manner and are thus able to take constructive measures to resolve their conflicts.

Golan (1978), Rappaport (1965) and Parad (1965, 1977) do not present the same picture of a crisis as does Weiss. For these clinicians, crisis is a time-limited, vulnerable state that lasts from the actual onset of active disequilibrium for a period of approximately four to six weeks. All three authors consider crisis and its resolution as a period during which the individual tends to be particularly amenable to help. If mediation is undertaken during this period of crisis, the couple are likely to be more receptive to a mediator who can demonstrably express his/her understanding of their crisis. Then, the process of mediation is likely to be viewed more positively as a means of alleviating some of the stresses they are experiencing as a result of the divorce process. A small amount of help, appropriately focused, can prove much more effective than more extensive intervention at a period of less emotion accessibility.

A crisis situation is neither an illness nor a pathological experience. It is a realistic struggle in the individual's current life situation.

Crisis is a call to new action; the challenge it provokes may bring forth new coping mechanisms which serve to strengthen the individual's adaptive capacity and thereby in general, rise his level of mental health. (Rappaport, 1965, p. 23)

Ricci (1981) provides some useful means of assessing whether an individual or couple is in crisis around the divorce. These indicators include a person or dyad displaying shock, denial or numbness. Expression of crisis may be exemplified in unusual behavior that has been labelled as "off the wall" (Ricci, 1981). Heightened anxiety likely indicates that the crisis is experienced as a threat. In such a state of crisis an individual may experience him/herself as on a roller coaster of feeling with attendant erratic behavior that does not permit any resolution of issues. If the modality of the crisis is that of predominant loss, the individual may appear depressed, numb or use denial to ward off the pain of loss.

Because mediation can offer the couple hope in resolving the parenting difficulties, the mediation process may serve to catalyze the couple. The divorce may take on elements of challenge. Within this set, mediation offers a carefully structured supportive environment for each partner to gain some mastery over his/her own life situation. If the couple are able to utilize mediation in this fashion, the crisis may begin to be resolved in a manner that enhances the individual's and the family's functioning.

Another possible indicator of crisis for either party may emerge in the course of specifying the agreement. Here one party may refuse each particular solution. Such behaviour has been termed "stone walling" (Kennedy et. al., 1982; Kressel et. al., 1977). Most frequently this indicates an individual who is still invested in the marriage. Mediation may serve as a vehicle to continue contact with the spouse rather than to resolve issues (Gold, 1982; Irving et. al., 1981; Bohm, 1980; Kressel et. al., 1980). For some parties the inability to reach a conclusion on issues or the tendency of rescinding agreement after an issue would seem to have been resolved, is likely to reflect the erratic and changeable thinking and feelings characteristic of the early stage of divorce.

Lowered self-esteem which most frequently is experienced immediately after separation has been typically perceived to be an obstacle to successful mediation (Weiss, 1974; Scanzoni and Polonko, 1980; Scanzoni, 1979; Bohannon, 1970). Low self-esteem is understood to function during the negotiations stage to undermine assertiveness and appropriate self-interest which are characteristics of constructive bargaining. However, an alternative explanation suggests that in the crisis stage the divorce is experienced as a threat to one's physical security and esteem (Gold, 1982; Brown, 1982). In an attempt to protect one's self and self-esteem, an extreme bargaining position that allows for no concessions may be adopted. A

mediator must be able to assess these considerations early in the process so as to support the vulnerable party, and strengthen the individual's sense of self-worth and strength, so as to facilitate realistic bargaining.

Weiss (1976) noted that divorce is such a shattering experience in every aspect of the person's life that the individual may be unable to conceptualize what arrangements regarding property or children are needed to rebuild his/her new lifestyle. Should the mediator be confronted by such a bargaining style, she/he may have to meet with the party in an individual session. A supportive atmosphere without the presence of the other party may permit the distressed individual to begin to explore what she/he may need to develop a new life plan. Thus, where the underlying reason for an extreme position or an avoidance of bargaining is a state of crisis, mediation may function to facilitate a positive outcome for an individual.

Golan (1978) recommends that in crisis situations the clinician assist the client to focus on the present situation in a manner that develops cognitive awareness and understanding of the relevant issues. For mediation to proceed constructively, an individual's ability to bring cognitive functions to bear is vital. A cognitive approach reduces the emotional content of the discussion so that the issues and options can be more rationally considered. The development of a viable agreement depends on the parties' use of their cognitive skills to select

solutions to conflict that can be reasonably expected to work. The explicit agreement around mutual goals and expectations is an integral part of the crisis approach. This can be utilized in the mediation process to assist the clients to function as mature adults who are expected to carry out their part of the work in the ongoing sessions. In divorce as previously discussed, stress experienced by the parties can be overwhelming, rendering them less able to problem solve or cooperate. The crisis approach proposed by Golan may permit the individual to gain a sense of mastery or at least reduce the stress to a more tolerable level. The reduction of stress in parties is known to facilitate negotiations (Kressel, 1985). This may permit the parties to utilize mediation from within a position of challenge rather than loss in the face of the divorce crisis.

As the parties begin to organize and work on issues between them, the mediator can keep them focused on what has previously worked as well as identifying alternatives to current unproductive interaction. To encourage the parties to experience new alternatives, "homework" assignments may be appropriate so that they can learn how to utilize these options. Also, any obstacles that arise in doing the activity can be reviewed and resolved. The mediator's own behavior may provide a role model to indicate positive ways of handling problem situations.

The worker/mediator must be prepared to shift roles



from engaging in a good deal of direction and activity at the start of the process to becoming more passive as the clients gain in their ability to problem solve effectively on their own. The mediator, in clarifying the terms of the agreement, acts much like the crisis worker to be sure that all the necessary issues have been reviewed.

At the end of the process, the crisis worker terminates the therapeutic process when the client has developed a plan and has begun to embark on it. The worker gives recognition to the work accomplished while terminating treatment. Often some provision is made for a client to call the worker in the future should the need arise.

Similarly, the mediator summarizes the work accomplished by writing up the actual agreement. Recognition and reinforcement for the work accomplished by the couple is often a useful and honest response. The agreement may include some provision for returning to mediation should conflict escalate to the point where third party intervention is necessary. Such an addendum may offer a secure point of reference as the two adults live with and refine their agreement.

#### Family Therapy and Mediation

As noted, divorce does not end the family but necessitates a radical restructuring of the family into a binuclear order. That is, if the family resolves this change productively, the children will in effect have two

homes since each parent will now have a separate household. The children and the adults will need to negotiate a new balance and style of interacting. Given the extensive changes and the few societal guidelines for handling these complex rearrangements, it is not surprising that many families are frequently unable to readily make these transitions in a productive fashion.

The use of family theory offers the mediator a means of understanding what steps must be taken for the family to find a new structure that gives each person a sense of equilibrium. Each family needs to be able to make the transition from a nuclear to a binuclear unit. Mediation can be an arena for facilitating the first steps in this difficult transition. Successful mediation may substantially shorten the transition time and result in a less painful experience of reorganization. Irving and Benjamin (1983) make the important point that,

1. An integral aspect of family life is the interdependence among constituent members, and
2. All family members actively participate, directly or indirectly, in the development and maintenance of family problems. It follows first, that divorce is a family process, not merely a marital one and second that involvement of all family members must also relate to problem resolution preceding change.  
(pp. 69-70)

The concerns of each member must be considered and considered and addressed during mediation if the process is to be fruitful.

Family theory views the healthy functioning of the couple subsystem as being crucial to the other functions and systems in the family. With the collapse of the spousal system many families will also experience severe impairment of the parental functions. Children are in great need of parenting and nurturance at the time of separation. During a period of great upheaval, such parental dysfunction is likely to be harmful.

One approach to aiding the adults in finding a new means of relating as parents is offered by Milne (1981). The clinician tries to assist the two parties to draw on their experiences of successful parenting from the period in family life when the couple system was intact and functioning well. This may be a viable technique for families who have a direct or disengaged style of conflict (Kressel et. al., 1980).

If the family has little positive history in cooperative co-parenting, family therapy (Minuchin, 1974; Minuchin and Fishman, 1981) offers the use of joining as a method of intervention in divorce mediation. The process of joining or accommodation can best be described as a method available to the mediator to relate directly to the family members and/or family system. Empathy and support are key behaviours at this point. To achieve joining and offer empathy and support in a manner that the family can understand and accept, the mediator may adopt the family's style and blend with it. In doing so, the

mediator can create the opportunity for the parties to consider or accept possible solutions for parenting that they have been unable to generate themselves or of which they were unaware. Similarly, the mediator may be able to validate original and unique solutions that the parents propose. At the same time, the mediator must be careful not to be inducted into the family system to such a degree that he/she loses manoeuvrability.

Although all parties agree that the situation needs changing, each one, practically speaking, has his/her own focus and solution. Joining, in this sense, is also congruent with mediation. The mediator can utilize his/her enhanced relationship with the two parties in establishing the rules of the process (Coogler, 1979) and by maintaining the facilitative characteristics of the mediation process. Liszt (1976) and Neal (1980) discuss the pacing of the process and its structure (fluid, frigid) as crucial to the avoidance of impasse. The mediator must constantly be in close touch and control of these factors. Joining offers a technique for bringing the couple into a cooperative mode with the mediator.

Effective joining may enable the mediator to keep the negotiations on an equitable footing by being able to support each party as needed. If the mediator uses him/herself well, neither party will experience the mediator as "taking sides". This preserves the mediator's neutrality (Haley, 1973). The mediator's perceived

neutrality may be an important factor during the direct phase of mediation. Such neutrality allows the parties to begin to take control and responsibility for the developing plan in the future parenting of their child(ren) (Saposnek, 1983).

Minuchin and Fishman (1981) suggest ideas of how to join with children in a manner that is appropriate to their developmental level. For very young children, for example, the mediator may need to get down physically to their level and initiate some concrete contact with a younger child such as shaking hands. For very young children or infants it may be useful to mimic their behavior. This both reduces fear in the children and models for parents that, even in the midst of family distress, affection and recognition can be given to children.

Minuchin and Fishman (1981) propose that with a family who have preschoolers, introductions start with the children, but for school-aged or adolescent children, the parents must be addressed first. In the first case, the emphasis is on nurturance needs of the child. In the latter, parental control and executive functioning are supported as this is the primarily relationship and issue for parents and children of this age.

Joining in this manner provides the family and each individual with a protective and supportive milieu in which to explore new ways of interacting. Simultaneously,

the mediator can begin to jar and challenge the current patterns and interactions that are counter-productive because he/she speaks within the family style and has gained the family's trust. Thus, even introductions become useful and strategic to mediation. These challenges give the family hope that the mediator can assist them to make their own situation better.

Another technique that can be usefully borrowed from family therapy is tracking. Tracking is a means of eliciting the family's story in such a manner that actual transactions can be observed and new methods of interacting can be carefully elicited and thus experienced by the family (Papp, 1983; Minuchin and Fishman, 1981; Okum and Rappaport, 1980; Weakland et. al., 1974). In this manner, the new family interactions can be actively tried and tested in an environment where correction can be given at the time of new learning (Haley, 1973). This may assist in the resolution of impasses involving "characteristics" of the parties in mediation. This new learning is more readily translated to day to day interaction if it has produced some sense of positive change.

A family assessment may be a very important aspect of mediation in determining which pitfalls or impasses are likely to be experienced by a particular family and what steps need to be taken to avoid or eliminate such difficulties. The mediator will want to take note of the dysfunctional pattern of interaction in the family. Since

mediation is such a brief intervention, this may need to be gleaned in initial individual contact with each party (Saposnek, 1983). A plan can then be developed to alter the interaction pattern or to preempt the dysfunctional strategies of these families (Saposnek, 1983; Madanes, 1983). Such strategies can help move negotiations in a productive manner.

Where a child and parent are overinvolved in a cross-generational coalition, the mediator may want to facilitate a better balance for the family by involving the distanced parent. This may also bring about a more balanced agreement of parental duties and rights in the new family structure. Such a change will also free the child by bringing the conflict into direct negotiation between the parents. Keith and Whitaker (1974) note that such coalitions give children a grandiose sense of their own power. Far from being a pleasant experience, the role of the family "monster" is disliked by the child (Minuchin and Fishman, 1981). In divorcing families, indications of such a perverse triangle is likely to be the expression of strong rejection of one parent by a child, the over-protection of a parent when a child refuses to visit with the one parent or expresses dislike of one parent over another. Since these are likely to be signs that loyalty issues have been distorted, it is suggestive of an improper cross-generational coalition (Madas, 1983).

Children who act as parents to their own parents are

not uncommon in divorcing families (Wallerstein and Kelly, 1980; Irving, 1981). However, it is important to assess the nature and extensiveness of such a relationship. If one parent has remained in the family home with several children, while the other parent has become disengaged (whether by choice or not), some degree of a child acting in a parent role would seem to be appropriate and needed (Weltner, 1982). Here, the remaining parent has so many roles to assume on his/her own that an older child may need to assume some of the parental functions. This can be appropriate if the tasks assigned the child are clear, developmentally possible and if the parent supports the child with the other siblings. Also, the "parent-child" must have time when he or she can follow their own developmental needs and tasks as well as be involved with peers.

The mediator can assess if this is a destructive system that will need modification by noting certain patterns. If the child is overworked, unprotected or scapegoated, the mediator may need to assist the parents to assume their proper functions. For the parent who has overinvolved the child, this parent may need to accept the distant parent's help as a means of alleviating his/her stress from an overly large parenting burden. If the mediator is able to facilitate the overburdened parent in recognizing the usefulness of involving the other parent, then cooperation within the mediation process may



be achieved. Although reinvolving an absent parent is a difficult and complex task, the active participation of this parent in cooperatively planning for the children may serve to seed his/her beginnings of greater participation. If an agreement is developed and implemented this may further draw the absent parent back into above parenting function.

Where a child has become enmeshed with a parent because of the child's perception that the parent's vulnerability, loneliness or hurt is caused by the parent initiating the divorce, the mediator may assist the two parents to free the child by reestablishing a parental executive system. Generational boundaries can be strengthened by returning decision-making to the parents in making a plan for the care of the children. Since this is the goal of mediation, this family therapy method is easily integrated into a mediator's role.

Another problem that frequently defeats mediators is the influence of an "interested audience". Most commonly that audience is the extended family. If the extended family has assumed a parenting role to the children and is unwilling to return it to the biological parents, then they may need to be brought into the mediation process. Here, the mediator will have to realign the family so as to return the functions to the appropriate family members. The parent who has abdicated the parenting role will need to resume active parenting. The more distant parent can

be reintroduced to divide the role. Both parents can have their parental subsystem bolstered by getting the two parents to support each other by opposing grandparents. This brings the two parents into a cooperative rather than competitive interaction, thus facilitating mediation and restoring desired and appropriate equilibrium to the family (Minuchin, 1974; Haley, 1973; Weltner, 1982; Abelson, 1983; Munichun and Fishman, 1981). Should one of the parents be colluding in such a cross-generational coalition, these interested parties may need to be invited to the mediation process in order to begin to change this coalition. A similar situation may be expected in remarried families where the new spouse attempts to assume an inappropriate parenting role.

Frequently, a child will display symptomatic behaviour during the divorce process. Wallerstein and Kelly (1980) have viewed this outcome as a psychodynamic response to the divorce. An alternate explanation is that the child is being exploited by one parent to keep the other parent out or more commonly to keep the parent who has left the family involved in an attempt to draw the latter parent back (Bohm and Goudge, 1983; Isaacs, 1983) into the couple constellation.

Such an explanation allows the mediator to intervene by appealing to the needs of the child as a "supra-ordinate" to the parents' immediate substantive issues in favour of assisting the child. Using family therapy interpretation, direct behaviour intervention may be

begun. The parent who is overinvolved may be encouraged to find outside, age appropriate sources of involvement (Haynes, 1981; Irving, 1980) in a new social network. The disengaged parent may then have a more involved role of caring for the child during those times. Such an intervention has two additional bonuses: strengthening the parental subsystem by involving both parents in a mutually satisfactory manner while assisting the parent who still wants the marriage to begin to develop support and satisfaction outside of the couple subsystem.

When faced by a parent who seems only too willing to abdicate parental responsibilities, the mediator often brings about an agreement on paper that is not satisfactory to at least one party. As noted previously, the absence of one parent may be painful and detrimental to the child. Thus, the mediator needs to have some means of reinvolving the distant parent if mediation is to be successful in developing appropriate parental involvement.

The mediator may need to explain individually to the parent who may be angry and rejecting of his/her former partner as a result of not just losing the marriage, but a parental partner as well, that it is crucial that the seemingly distant parent be reintroduced. It may be important to point out that the child needs both parents to maximize healthy development. If that is not effective the mediator may have to stimulate self interest by demonstrating how the absent parent is not shouldering

his/her responsibility and leaving too much of a burden on the involved parent. Finally, the harmful destructive effects of having one parent uninvolved may need to be detailed along with predictions of how this distance may well have dangerous effects on the youngster. It should be noted that realigning a "distancer" takes a great deal of skill and may be beyond the scope of mediation. Should this concern emerge, it may be useful to suspend mediation in order to work with the family to improve the nature of the parenting.

If there is a child acting out against a parent this is likely to reflect a cross-generational coalition with a parent. If that child is acting out against the custodial parent, rather than reflecting poor parenting skills, it may reflect the undermining effect of a cross-generational coalition with the non-custodial parent. Such a coalition may begin to be dismantled by having the two parents working together in a parental subsystem as a result of successful negotiations. Here the child can be assisted to a more disengaged position that is freeing, by having both parents explain the divorce in a non-blaming fashion. By taking such a stand the parents become cooperative and gain in their sense of competency. This enhanced self and other perception through this mutual support may well pave the way to having so altered the family interaction that cooperative conflict resolution may be used to arrive at a mediated agreement. By using this

intervention a competitive interaction has been redefined and transformed into cooperative parenting.

Haley (1973) strongly urges anyone trying to help families to resolve conflict to obtain a history of what attempts the family has made to resolve the issue(s) in the past. This ensures that the mediator will not offer solutions for the couple to consider that have failed for this family. In this manner, whatever suggestions are offered are new and not tinged with failure. The mediator does not have his/her input discounted by being perceived as a poor source of information, which could very seriously jeopardize the whole process (Coogler, 1979).

#### Gender Differences in Divorce Mediation

Mediation literature has identified "disparities in the parties' relative power and disparities in the parties' degree of interpersonal sensitivity" (Kressel, 1985) as obstacles or barriers to successful negotiation. The impact and importance of these two variables in divorce mediation appears to have been greatly underestimated. In reviewing the literature on divorce mediation, only one author considered these variables (Kressell, 1985). Divorce mediation is the only negotiation process that always has a sole male and a sole female negotiator. Power differential and interpersonal sensitivity arguably have greater salience in such a setting. Our society has historically been sexist (Haynes, 1981; Bernard, 1968;

Friedan, 1963; de Beauvoir, 1971) with power and control being vested in men. While recognizing that not every man holds power, the general social conditions of society create the environment in which this is likely to occur. The power differential which favours men has flourished in the family. When these facts are considered in divorce mediation the male-female differences of power are no longer peripheral. Rather they are central to the successful outcome offered by mediation--the mutual and voluntary re-ordering of the family. To achieve this goal, the parties must work in the process of negotiation as equals.

Interpersonal sensitivity is a quality that has again been divided along sexual lines (Bernard, 1975). Sensitivity to and meeting another's needs as well as consideration of the other's feelings has characteristically been ascribed to women in their expressive role. It has been expected that men will have responsibility for instrumental function, that is getting the task accomplished without attending to personal matters (Bernard, 1975). Divorce mediation requires that each party be sensitive to the other's legitimate needs and be able to identify trade-offs in options that will allow each party to achieve as many of his/her goals as possible if negotiations are to be successful (Kressel, 1985). As such, mediators need to find techniques that can enhance the party lacking in this skill leading to greater sensitivity of the other party and thus increasing mutuality.

In this section of the practicum research on the behaviour of men and women in regard to these two variables was examined. Some suggestions for identification of these issues and possible techniques to move the parties toward equality on these two dimensions are offered mediators so as to facilitate a more successful and enduring outcome. Again, these descriptions will not fit every man or every woman but are arguably prevailing gender characteristics.

Rubin and Brown (1975) note that women tend to be actively cooperative, whereas men are generally competitive. "We suggest that it may be out of necessity that all kinds of low power or low status positions (be they black, members of minority nationalities, women, etc.) learn to pay close attention to personal cues . . ." (p. 165). Women tend to be concerned and respond to the interpersonal cues emanating from males. Bernard (1975) reports that expressive talk or stroking has been assigned to women in their role as nurturers, when considering the results of research on 46 cultures. Men, complementarily, are seen as having control of the instrumental function, that is, getting the task accomplished.

In resolving conflicts, these opposing approaches can mean that the male may be delineating the areas of the discussion and that the woman may be as busy placating her former spouse as in advancing her own position. This may lead to a situation of false agreement, with mediation

collapsing because resolution of the conflict never really occurred.

Another aspect of this sex difference in conflict management and resolution is that the woman may be submissive in the face of perceived authority rather than acting truly cooperative. As Deutch (1973) reports, conflict that is resolved by the weaker party capitulating to the stronger party, is a conflict that is likely to erupt again, either in a disguised form or when the vigilance of the more powerful party is seen as being reduced. For example, once the mediation has been finalized as a court order, the woman may not comply believing that the man would not want to begin proceedings which would nullify the agreement. In cases where people have been to court repeatedly for irregularities in following the court order, especially where the mother may be denying access, a mediator may need to be sure that the open conflict mode is being utilized before renegotiating an agreement so as to eradicate pseudo resolution of conflict.

Mediators may find themselves having to explore with the woman or man his/her view of the issues for mediation. Since women are socially trained to attempt to translate their own motivation into serving others (Miller, 1976), thus a mother may couch her own interests in terms of concern for her children. Men being primarily trained to autonomy, may be unable to focus sufficiently on the needs



of other family members. A related problem that a mediator must consider is the fact that mediation as practiced in Canada focuses solely on plans for the children. Since women are typically heavily vested in their role of mother, it may be very difficult for them to negotiate an agreement that suggests any loss in this role, especially as they are also relinquishing their role as wife. For men the change in parental role is usually less of a problem as fathers in this society are less invested in the parenting. While the man is also losing his role as husband he retains his identity as a worker and provider (McMahon, 1980). The importance of these factors needs to be stressed as it has been ignored to date.

Rubin and Brown (1975) note that there are major differences in conflict resolution styles for field dependent and field independent individuals. Field dependent people tend to be socially sensitive and experience events in a global undifferentiated fashion that field independent individuals do not (Rotter, 1981). Thus field dependent individuals are less able to separate issues into discrete elements and are less analytical. In mediation this may result in impasses that arise out of an individual's ability to separate issues as well as to differentiate between personality conflicts and issues at hand. Ury (1980) has detailed how crucial it is for successful negotiations to have the personal concerns separated from the issues.

Many women tend to be field dependent and may need assistance in recognizing their tendency to be socially concerned with the relationship elements of any process rather than focusing on the issues that need to be resolved. Men generally tend to be field independent. With them, the mediator may need to facilitate a greater orientation to the relational elements of mediation. These differences are so well documented (Rubin and Brown, 1975) that the mediator needs to be self-aware regarding internality/externality. While there has been a tendency to view the "expert" as being above such considerations, research in the area of experimenter bias suggests these matters should not be overlooked.

For individuals who have a high need for social approval or recognition, the mediator may be more helpful in working on cognitive tasks and bargaining with the client on his/her own prior to both parties being able to cooperatively resolve the areas of conflict. Such a meeting may be crucial in helping an individual save face while considering alternative solutions. An individual session may serve such an individual with an opportunity to try out possible solutions without the self-revelation being exploited by the other party. Since women are expected to be self-revealing while men are expected to be personally closed, special attention to this factor by sex is indicated for the mediator.

Men may require facilitation in gaining an

understanding of the other party's needs. To accomplish this goal, the mediator may need to meet individually with the man and to have the husband act out the spouse's role. This experiential method may enable the more internal individual to understand the other party's concerns and thus be able to work out a mutually acceptable solution. Again, the security of face saving may be crucial to the individual exploring his/her partner's concerns.

Bernard (1975) notes that women's suggestions on instrumental tasks generally receive less consideration than do those of a man. The mediator must strive to be even handed in response to instrumental suggestions made by either party. It has been documented (Bales, 1950; Borgetta and Crowther, 1965) that males assume an instrumental role whether in same or mixed sex groups. Women, by comparison, will only assume a proactive role in same sex groupings. When males are present, women tend to react to the contributions of the males and emphasize solidarity and positive interchanges. Mediators need to be watchful to detect such patterns and to act so as to equalize the process. The mediator may need to actively respond to the woman's instrumental suggestion so as to model this behavior for the man. Alternatively, the mediator may need to elicit instrumental responses from the woman while simultaneously dampening the tendency of the women to support the male even when major differences between the spouses exist.

It is important that the mediator be aware of signs of this tendency to placate or to be submissive in the part of the female client. Women tend to use interrogative statements to obtain the right to speak (Fishman, 1978). The mediator needs to be vigilant for "hedges" such as "I guess", "sort of", and so on, that are tacked on to requests or demands. Smiling in women may reflect their social role as much as their affect.

Posture and spatial arrangement can be a crucial cue to the mediator of power relations that may need to be addressed during mediation. Gottman (1961) noted that women tend to be more proper in demeanor, posture and bearing than men, but that this differential is increased when the male is seen to be a threat or very powerful. Thus in the early stages of mediation if the man is extremely relaxed and expansive in his posture and the female very proper, it may reflect a vast power difference so as to lead to impasse or to a submission based agreement that is not likely to last. This behaviour should be viewed for congruency, that is, the mediator needs to be sure that the affect, cognition and behaviour match, especially as women's social role often results in incongruency that may go undetected.

Finally, the mediator must be watchful for the tendency of men to speak more, interrupt the woman more frequently and to control the topics of conversation. Also, a man's possible tendency to complete the woman's sentences

and to dismiss the topics that his former wife may introduce need to be checked early in the mediation process to permit a more equitable dialogue.

Women tend to refuse mediation more frequently than men (Pearson et. al., 1982) because they tend to have concerns regarding trust or are fearful of their ex-spouse. Rubin and Brown (1975) note that women tend to be more trusting initially but any violation of their trust is not easily forgiven nor can it readily be repaired. Similarly, women tend to seek a more equitable solution in bargaining than men (Rubin and Brown, 1975; Bernard, 1980). If distributive justice is not the focus of mediation, women may tend to withdraw from such a procedure (Gilligan, 1982).

Overall, women tend to utilize the conflict resolution strategies of individuals with high interpersonal orientation, while men tend to operate within a low interpersonal style (Rubin and Brown, 1975). Men tend to approach conflict situations with an attitude of high risk taking, are concerned with their own goals and tend to have a high need for achievement. Women, in comparison, tend to be low risk takers, have a high need for affiliation and be concerned about the relational elements in the interaction. Thus men tend to be more competitive while women tend to be more cooperative. These stylistic differences in conflict resolution must be recognized and dealt with by the mediator so as to enhance the successful outcome of mediation.

CHAPTER VI  
THE PRACTICUM SETTING

A clinical practicum in divorce mediation in regards to custody/visitation was arranged under the direction of Dr. Howard Irving and was established at Family Services of Metropolitan Toronto during the fall semester of 1983. The agency is part of a wider network of non-profit Family Services Agencies that exist across Canada and the United States. Like all Family Services, the basis for provision of services is voluntary self-referral. As a non-profit agency, Family Services of Metropolitan Toronto receives financial support largely from government, the United Way and consumer fees. Clients are billed on a sliding scale pegged to the party's respective income ranging from one to forty-two dollars per session at the time of the practicum. The range of service provision included individual, marital, family and group therapy. Educational and supportive workshops for children and parents who were experiencing or had undergone separation and divorce in the family were provided on a regular basis. Research on such topics as separation and divorce as it affected children and separation counselling were funded by the agency. At the time that the practicum was arranged, Family Services of Metropolitan Toronto were seeking to expand their services to provide divorce mediation. In that context the agency agreed to have this student placed

in practicum under the direction of Dr. Howard H. Irving of the University of Toronto.

This student was situated at the Wesley Street Branch in the heart of downtown Toronto. The agency was interested in making the mediation services available to all possible clientele. A very central location was considered to offer one means of maximizing the availability of the service. As part of the practicum, two workshops for staff of the Family Services of Metropolitan Toronto were arranged. It was hoped that increased awareness of divorce mediation would encourage staff to develop expertise in this area. The additional benefit of being able to introduce this student to staff and thus encourage more referrals of all potential mediation cases occurred during the course of the practicum. These workshops were developed to inform staff about divorce mediation in regard to custody/visitation concerns and to provide preliminary exposure to staff in the implementation of cooperative negotiations in the context of working with divorcing parties. The practicum provided an opportunity for this student to attend an advanced workshop for adults experiencing divorce as well as completing a graduate course in divorce mediation, both taught by Dr. Irving.

In the course of the practicum only eight referrals were made for mediation. Of these, only six could be classified as being referrals in which divorce mediation

seemed appropriate. In the case of two referrals, one couple was able to clarify during the initial interview that they wanted marriage counselling, and in another case the woman was able to state at the outset that she required therapy in regard to separation. Of the six remaining cases in which divorce mediation was implemented three resulted in an agreement and three cases ended without any agreement. These will be reviewed fully in this chapter.

A number of factors contributed to the small number of cases seen. As this student was the first individual to offer divorce mediation at Family Services of Metropolitan Toronto, there was little awareness in the city or even the immediate community that such a service was available. In addition, divorce mediation was still very new in 1983. The provincial and federal demonstration project had been funded for two years in 1978 and 1979 but had not become a permanently funded public service. Thus several years later the public was still unfamiliar with divorce mediation in general. The family service that was attached to the provincial court was not prepared to have clients directed to another service for the purpose of a student practicum. The service director indicated that clients who elected the provincial service expected a free public service rather than fee for service as offered at Family Services of Metropolitan Toronto. Finally, the private practitioners who had developed an association



recognized by a group of family law lawyers, appeared to be reluctant to recommend clients to this student as this clientele was the source of their income.

In the course of the practicum this student worked on an individual basis. Supervision was provided on two levels. At the agency level, the Senior Social Worker of the branch met with this student on a weekly basis. Dr. Irving also met with the student on a weekly basis to review cases. In addition, between regular supervision, Dr. Irving made himself available for consultation at any time. Dr. Irving provided some training through role play and in observing him within a workshop. This student was also able to observe Ms. Goudge in working with a family.

Service was delivered to adults and included children wherever it was possible. The children who were at the toddler stage or younger were not seen as they were not developmentally ready for such participation. In one case, the children were not brought into the process because both parents reported that the children were in agreement with their plan for joint physical custody. One case did not proceed past the initial meeting with each parent. In this instance, the young girl was not interviewed. In all other cases, children were included.

Families were seen for four to six sessions of an hour to an hour and a half for full mediation. There was one case in which there were three sessions, one with each

parent and one with the child, and one case where there were two sessions. The latter two cases were ones that did not proceed through a complete mediation cycle.

CHAPTER VII  
THE FAMILIES

The adults who were seen can be described as having been married on the average of seven years. The briefest marriage being four years and the marriage of the longest duration having lasted 12 years. The range of ages for the fathers at the time of mediation was age 28 for the youngest and 43 for the oldest. The average age of the men was 37. The youngest woman in the sample was 27 and the oldest was 41, while the average age was 35.

Only in one case had both parties remarried subsequent to their divorce. In that case the woman had been divorced from her second husband and was currently living in a non-married relationship. The father had just remarried in the past year. Two of the remaining men had become involved with new partners since the separation but were not remarried. For these two men the official three years of living apart that could be used as a basis for a legal divorce had not elapsed. Only one woman identified herself as having become involved with another man. In her case this new involvement had prompted her to leave the marital home.

The women in this sample had generally higher education than the men. One woman was pursuing a graduate programme, one woman had some university training and one woman had been a licensed registered nurse. The other three women

were working as factory worker, a full time homemaker and a secretary. Only one man held a university degree while two had technical training (petro-chemical technician and draftsman respectively). One had not completed high school but worked as a manager in a small printing business. Two men had small businesses and had high school educations. All of the men earned over twenty-five thousand dollars annually with five earning between thirty and thirty-five thousand dollars yearly. The average income for the men was \$31,500 annually. The women by contrast earned on an average less than half the salaries of the men. One woman was on economic security while a second woman who was putting herself through school as a computer programmer expected to earn not more than fifteen thousand dollars as a free lance artist if her plans went well. Two of the women anticipated earning between eighteen and twenty thousand while one woman had a professional position that earned her twenty-five thousand dollars. One woman managed as a homemaker on child support payments and a small inheritance. Their average annual salary was approximately \$13,000.

All of the children in this sample of families were children of the first marriage. These children ranged in age from two and a half to 15 years of age. The average age of these children was seven years old. Four families had one child each, one family had two children and one family had three children. Only one family had teenagers

while all the other children were under 10 years of age. What was remarkable about this sample was that only one child was considered to have had any psychological problems as identified by either parent. These problems predated the separation.

In three of the cases the physical separation had occurred six months prior to the parties seeking mediation. In two cases the parents had lived apart for over five years and in the remaining instance the physical separation had occurred two years prior. Four of the couples had already been involved with lawyers and two of these couples had been through the court system on at least one occasion. Two of the couples who had not sought legal representatives. In one case the separation had followed eight months of marital therapy that had become separation counselling. In the last family situation the wife had left the husband and child to live with another man and the husband had harboured hopes of reconciliation.

During the course of interviewing, four of the men stated that they did not understand the reason(s) that the marriage ended. In one case where there had been lengthy psychological intervention, the husband could recognize some of the problems but still stated that in his view none of the issues or concerns raised explained the need for the marriage to end. For another father, after two years of separation and several major court hearings, he claimed that there was nothing that could explain why his

wife left the marriage. In his view, the marriage was working well and financially their situation had been very positive. In the third case the former spouse claimed that he had not really understood why the marriage ended but after the divorce had accepted his former wife's view that the marriage had just "fizzled out". In the fourth case the husband stated that he did not understand why his wife had left and still wanted to resume the marriage. He maintained this view although the wife had physically removed herself from the home for six months and was living with another man. In the remaining case the husband and wife identified her continuing and serious psychiatric problems as the reason that the husband had ended the marriage.

The women in the sample had all been able to identify what they perceived to be their understanding of the marital dissolution. Four of the women felt that their husbands had attempted to be controlling in many areas. The woman who had experienced physical abuse perceived this to be the extreme aspect of the husband's need to control. He had, in her view, attempted to disrupt long standing friendships with women as well as men. He had not supported her in developing a career path but had been very insistent since the birth of the child that she become a full time homemaker. For his part, he had refused to curtail his social life but he did participate fully in parenting their boy. The woman who had left her husband

for another man claimed that beyond the physical attraction, her new partner recognized her as an individual and was encouraging her to develop herself in the work force. In contrast, her husband appeared to want a very traditional marriage and did not support her aspirations although he expected her to support his goals. For the woman seeking her graduate degree and working, the understanding of her marriage that she held was very similar. She viewed her husband as being threatened by her success and being unwilling to recognize her legitimate need for growth. In the case where the couple had been separated for two years, the wife claimed that her husband had been so domineering that she had left the marriage. She felt that he continued to control her life by interfering with subsequent boy friends and making it impossible for her to get on with her life. She claimed that her actions, including requesting court involvement, were an attempt to have him recognize her independence. One woman identified her psychiatric problems as having been the reason that the marriage ended. She only wanted to stay involved with her daughter and found the father's rigid stance distressing. The sixth woman felt that her marriage had just come to its logical end and that neither of them had been attached to each other although it was she who had sought the separation. In five of the six families it was the wife who had initiated the separation and wanted to end the marriage.

## Results

Of the six cases worked with, three had achieved an agreement for the ongoing care of the child(ren) through the mediation process. In addition to detailing the time that each parent would spend with the child(ren) all three had opted for joint custody; one for joint legal custody and two for joint physical custody. Although in the latter two cases both parents were aware that the time was not divided into an actual 50-50 arrangement, they selected the joint physical custody determination to underline their view of both parents being committed to the raising of their child. In the former case, physical custody would remain with the father but both parents acknowledged the other parent's right to be fully involved in their teenage sons' lives.

In two of these cases the final agreement went forward to the respective lawyers for drafting into a formal consent order. In the third case, the mother was unprepared for taking formal court action but both agreed that they would try the arrangement for six months to ensure its feasibility. All three agreed to return to mediation should problems arise that they could not settle between them rather than proceeding to court.

Of the cases that did not result in a mediated agreement, in one case mediation could not continue as one party became unable to proceed due to psychiatric problems. In the second case, the parents had already agreed to



joint custody but were having difficulties in managing the arrangement to each party's satisfaction. In the course of mediation it became apparent that the husband was continuing to experience difficulty in accepting that the marriage had ended. As a result of the intervention he was able to request that mediation be postponed so that he could seek counselling regarding his continuing strong sense of rejection and wanting to reconcile, although he knew this was not possible. In the third case the woman had withdrawn because she felt that her confidence had been betrayed by her lawyer supplying her phone number to this student. By the time that was clarified and she was willing to try mediation again, the father refused. He believed she was not serious about mediation and was insistent on returning to court despite the fact that several previous court actions had failed to resolve their problems.

Only children of two families were interviewed. In one case these children were teenagers, aged 15 and 13. They were interviewed as they were at a developmental stage where they should have direct input into the family plan (Wallerstein and Kelley, 1980). The two parents had related very different pictures of what the children wanted and needed in the way of parenting. There was also some difficulty that this student had noted regarding the father's fear of appearing disloyal to his new wife. Because of the issues of loyalty it became necessary for the mediator to provide the opening for bringing the

children's concerns and expressed wishes in regard to ongoing contact with their mother and father to the parents. In the second case, the child, who was eight years old, was again interviewed because of the degree of conflict and disparity in the parents' statements regarding the child and his needs. It was hoped that in eliciting the child's needs some leverage could be brought to bear in having the parents respond to the child's needs rather than continuing their relentless struggle with each other.

In another two cases the children were aged two and three and a half. Since both parents wanted the other to be fully involved, there seemed little need or use to interview such young children. In the fifth case, mediation was undertaken to resolve some difficulties in implementing a joint custody arrangement that the parents had devised on their own. They both wished to continue the arrangement but required some mediation to improve their interaction. Again, there was no need to interview the children as neither parent identified the children as having any problem with the arrangement and both felt it important that the children have frequent contact with each parent. In the last case, there was no opportunity to even assess if the child needed to be involved as the mediation did not progress beyond speaking to each parent once. This latter case is included because both parents had stated their willingness to mediate and because the process was begun.

Description of Mediation

Case A: Dawn, the mother, was 28 years old while the father, Paul, was 30 years old. They had been married for four years. Their son, Kevin, was age two and a half. Paul earned \$32,000 per year while Dawn would earn \$15,000 at most by her own projection. They had been separated for just over eight months.

Dawn had left the home following the escalation of marital conflict into violence. The marital conflict from Dawn's viewpoint emanated from Paul's inability to allow her any independence and his insistence that she continue to be a full-time homemaker. She had expressed her concern that her husband had damaged friendships between herself and female as well as male friends. When the marital discord ended in violence she decided to end the marriage. However, she believed that Paul loved the child. Equally, she needed his involvement as a parent because she was planning to train as a computer programmer so that in time she could secure a reasonable job at a good income. In addition, to support herself she planned to work as a free lance artist primarily in commercial art. Since she had done this work previously, she believed this was feasible. Dawn claimed that seeking support from Paul over time was not what she wanted. Rather, she intended to manage independently.

Dawn indicated that she had initiated mediation because she believed it was important for her, as well as

the family, that she resolve the parenting issues directly with Paul. She wanted to speak for herself and she felt that with a neutral party present Paul would listen to her viewpoint and that they could resolve the important concern of future care for their son. Dawn was convinced that if she were to proceed to court, Paul would feel obliged to fight aggressively if he perceived himself questioned in his role of father. Dawn claimed that while she had been at home she had done most of the child care, she recognized Paul as a loving and good father. As a result she appreciated her son's need to be involved with them both. For all of these reasons she had sought mediation.

Paul indicated that he agreed to try mediation as his lawyer had encouraged him. He related that he had been attracted to trying mediation as he had suffered a great deal in the years of protracted court fights following his parents' divorce. However, he was skeptical about resolving matters with Dawn both because he believed her to be very competitive with himself and because he felt that he could offer his son a better home. He had a position that paid well and he could provide for Kevin which he doubted his wife could. He also believed the boy should have one home and that because his wife was going to school and wanted a life of her own, she would be less able to provide the boy stability. He claimed he did not see himself as getting involved romantically again and

considered himself an able parent.

An initial separate meeting was undertaken with each spouse. This is an unusual procedure but because of the reported incidence of spousal abuse, the mediator considered it essential rather than advisable in this case before proceeding to direct negotiations. During the course of the interview it became apparent that although only eight months had elapsed since the separation neither party was interested in or had tried to reconcile during the past six months. As a result a crisis orientation did not seem appropriate. Dawn was involved in individual counselling in regard to the abuse and felt able to deal with Paul if a neutral third party were present. Paul for his part did not admit nor deny the physical violence.

Using this information the mediator was able to develop a strategy to elicit cooperation based on the fact that the parents had expressed the wish for the child to be involved with both of them from the outset. Because of the explosive problems in the marital relationship, to minimize undesirable conflict, the strategy of pre-empting (Saposnek, 1983) was employed. In this couples case, the differences between the parents was validated by recognizing that both loved their child but in different ways and the need of the child for being involved with both parents was stressed. In addition, the mediator focused on ensuring that the needs of the child would be considered before the needs of the parents were invoked. The latter tactic

was used to maintain the focus on the child and to assure both parties that the mediator was objective or neutral as she was focused on the child rather than on the parents.

To actually seed an attitude that could promote more trust, the parents were asked to plan the time that each would spend with the child for the duration of mediation. Since the two parents were able to achieve this goal within the time frame of the first session, their "homework" then consisted of successfully completing their plan.

During the next two sessions the parents worked at developing a plan for the ongoing care of the child. In the first of these two sessions it became clear that Paul was not comfortable with Dawn's lifestyle. He was more settled, and above all, traditional. Both agreed with this analysis. With some reframing and repetition by the mediator as to the unique qualities that each parent offered the boy, the two parents were able to engage in a productive discussion in regard to planning of mutual problem solving around major decisions in parenting such as choosing school and activities. As their homework, the two parents were to decide on Kevin's day care and any age appropriate activities for the coming year. The mediator anticipated that the parents would either find a mutually acceptable solution, or if this did not eventuate, the failure in mutual problem solving might indicate if the source of impasse related to a power differential.

In the third session the parents were able to report

an agreement on a day care that was at an equal distance from each parent's home. Paul planned to take Kevin to swimming lessons while Dawn intended to take her son to creative play classes. It would appear that each party had found a way to assert his/her self. The balance of the session was devoted to the two parents brainstorming alternatives in regard to developing an overall parenting plan. Both needed assistance in generating alternative plans, reviewing and selecting options that met both their needs. Considerable effort on the part of the mediator was needed to reinforce each parent's recognition of the other's lifestyle while minimizing judgemental statements. Reframing areas of conflict around lifestyle differences as opportunities for the child to have a richer life were very effective in this case. Normalizing the conflict as usual between parents in the process of divorce were particularly helpful to the father. He was able to negotiate time for his son to spend with the maternal grandparents as a separate issue although at the outset he maintained that such visitation had to be at the expense of the mother's usual time with their son. Because of the history of exploitive power in this couple's interaction and the continuing judgemental quality of the husband, active listening techniques were brought to bear to increase his sensitivity to Dawn's ideas and needs. Both partners were requested to operate in this fashion to avoid the appearance of bias. However, the intent was to have Paul

listen to Dawn rather than preparing his rebuttal as a form of pre-empting (Saposnek, 1983).

In deciding custody and access, Dawn's needs were reflected in the agreement. Dawn identified that her involvement in school and work necessitated that she have some weekend time for herself during the next year to allow her a social life. Thus an agreement was reached including joint custody with major physical care to the father that suited both parents. A provision to return to mediation at least at the end of the year to revise plans in light of developments in each parent's or the child's life was included.

Case B: The second family in the successfully mediated grouping were Jean, aged 24, and Danny, aged 27. Their son Dylan was two and a half. Jean had left the marital home with her son eight months previously and was living with another man for which she continued to experience a great deal of guilt. In speaking to each parent separately it emerged that Mrs. T. wanted to continue toward divorce but was very worried about being identified as a visiting mother since she had left the marital home without her son. She currently spent time with him only on weekends and wanted Dylan to live with her and see his father on alternate weekends. Danny related that at the beginning of the separation he had wanted to reconcile but now believed that this was no longer what he wanted. He did want Jean to take on more



of the parenting responsibility although he wanted sole custody. He felt that over the past six months he and Dylan had become very attached and that he was unprepared to have someone else become Dylan's father.

Because of the recency of Danny's claim that he no longer wanted to reconcile and Jean's stated fear of being seen as a mother who abandoned her child, this mediator hypothesized that Danny might be in a crisis state in regard to the end of the marriage and may still have hopes of reconciliation and that Jean may not have truly disengaged from her husband. The lack of any strong feelings in the course of the conversations suggested that this couple might have an autistic style of communication (Kressel et. al., 1980) in which each avoided conflict. These factors suggested that the father might use strategies aimed at reuniting with his wife. Even if this were not true both parents needed to be reassured that they would always be Dylan's parents and that neither need nor could "lose" their son. Time was spent with each parent supporting them and pointing out that they would continue to be the child's parent and that no one could take their place.

During the initial session with both parties each adult remained calm and businesslike. Danny volunteered that he believed Dylan, their son, should remain in the family home to ensure continuity of residence but that he wanted Jean to take on more of the responsibility for Dylan. At present, Jean had the boy with her on weekends

but Danny felt that he wanted some time on weekends with Dylan himself and some evenings off during the week. He claimed he had allowed Jean to be involved with Dylan whenever she chose so as to keep the door open for reconciliation. Since he no longer believed this was possible he wanted an arrangement that suited his needs more.

Jean for her part was very silent but did propose a plan that would almost provide for physical joint custody. Danny indicated that he wanted to think about the plan and offer some alternatives. He also wanted to consider holidays, Christmas and so on. Both agreed to bring two detailed plans for ongoing parenting for the following session.

At the second joint session both Danny and Jean had each prepared two alternate plans they believed to be fair and acceptable. They began to negotiate toward a mutual plan. Initially Danny maintained the position that since he had been the main caregiver in the past six months, this should continue. Jean was able to strongly contend that she had been the main caregiver for two years. The two parents were then able to devise a plan to fit their work schedules. The basis of time spent with Dylan was in relation to his needs and what was appropriate for his age. Both agreed that the plan must be reviewed after three to six months as Dylan was very young and it would be important to determine if Dylan was responding well to what was essentially living almost equal time in two homes. Jean

stated that this arrangement made a great deal of sense since she and Dylan's father had developed a reasonable means of dealing with each other over the last two or three months. Since Danny had stopped pressuring her to return to the marriage, she felt she could work with him.

However, when it came time to determine the type of custody they could agree to, Jean became very distressed and refused to go further. She requested that they try this arrangement and depending on how well this worked for Dylan as well as themselves they should then decide, as she still feared she was losing her son as a result of leaving the marital home. Jean claimed she needed to be sure that Danny was really going to allow this arrangement to work and accept her leaving the marriage.

While Jean's behaviour indicated that she was still having trouble disengaging from Danny, both agreed that the new arrangement should be tested and refined before finalizing the agreement as a consent order in court.

This mediator attempted to normalize the fear and anxiety around having to maintain regular contact with each other as Dylan was only two and a half. This reality seemed most daunting to Jean. Although she could recognize Dylan's need for his father, she had difficulty in making the transition from the marital to the co-parental relationship especially as she felt guilty for, in her view, she had left her son behind. This mediator suggested that perhaps a trial phase would permit these concerns to

surface and be worked out. In this regard the mediator had the two parents agree to contact another mediator if problems evolved or when they were ready to formalize the custody since this mediator would no longer be in Toronto. Jean was encouraged in private to see someone in regard to her distress in leaving the marriage and her perceived guilt of having abandoned her child.

Case C: The family in this case had experienced their divorce seven years prior. Barbara, the mother, had been remarried shortly after the divorce and that marriage had also ended in divorce. She was now living with her third partner. Eric, the father, had remarried about two years prior. Both parents agreed that until the past year they had had a good parenting relationship. In fact, since Barbara's second marriage was ending she had them go and live with their father as she felt he could offer them a more stable situation at the time. They had been with him for the past three years.

In speaking to the father he indicated that he considered his current marriage to be very stable and that his children and wife had been able to develop a positive relationship. His only stated concerns were that the boys' mother did not always return them on time and he did not believe that her current partner was sufficiently responsible while supervising them. This had come to light in the past month when the eldest son, Kirk, age 15, had been allowed by mother's boyfriend to drink a beer. If these

matters were addressed he would have no problem in continuing the present plan. He was insistent that the boys remain with him and not have their lives disrupted again. Father was very guarded in talking about his current wife's view of the time the children spent with their mother except to emphasize that she was a very good parent.

Barbara, the mother, stated that she was certain she could work out any concerns with the father but believed that the problems may arise with his wife. She recognized that her lifestyle was different from the boy's father and stepmother's lifestyle but felt that she was always very responsible. In her view she felt that as a parent she could allow her son to try a beer with them while ensuring that his experimentation with alcohol was under her direction. Her concern was that in the past two months the boys were not allowed to come to her home together. One had to stay behind to do family chores. She saw this as unreasonable and believed that the stepmother had initiated this plan and that father felt compelled to side with her. Barbara was insistent that she could welcome the father's wife if she would allow visitation to be more relaxed. She recognized that the eldest boy wanted to remain with his father but she needed some help in being clear as to what Edward, the youngest, really wanted.

The two teenagers were interviewed on their own and jointly to allow them to speak freely and also to encourage them to support each other. These boys reported that they

wanted to remain with their father as they had friends in the neighborhood and were active in school sports. They also wanted more time together with their mother. Both boys were experiencing themselves as abandoned by their father who always sided with his wife whom they were experiencing as too controlling. They felt she interfered with their sports activities and was making it hard to have time for friends because of her demands regarding chores. Both boys wanted their parents to accept their right to live with their mother if matters got worse at father's home. Both reported that their father had put considerable pressure on them to go against their mother but that they did not wish this part to be shared with their parents. They experienced mother's boyfriend as friendly but not attempting to be a parent and enjoyed their time at mother's home.

Because Eric's wife was so involved in the family problems, she was seen by this mediator. Jane stated that she wanted the boys to feel that they were all a family and that she did not feel that Barbara, the mother, recognized or supported her. She did recognize that she had firm rules but believed they were good for the boys as her husband had had a very laissez-faire attitude before. She recognized that the two parents had to plan for the children but felt that if Barbara would validate her, she could improve the relationship with the boys. She acknowledged that the boys loved their mother and that she wanted

what was best for them. Jane was invited to the mediation session with the agreement of both parents.

Dick, Barbara's boyfriend, had declined any involvement as he felt that this was a matter for the two parents to decide. In addition, he and the boys' father seemed unable to get along.

This worker had prepared for the joint session with some concern in regard to the stepmother (Jane) and Barbara (the boys' biological mother) being able to develop a better understanding. The fact that there had been almost a two-year period of cooperative parenting history between the three adults and all the adults seemed open to the childrens' needs made this session a likely opportunity to begin to restore the previous goodwill.

The joint session was begun with a monologue by the mediator in reviewing the rules of mediation and the successful history of the family in being able to parent the children. The disagreements were recognized and the problems of trying to maintain the parenting relationship while each parent also built their own life with another partner were reviewed so as to normalize their experience as a common problem of blended marriages. The two teenagers were also present.

What was most interesting was that Barbara quickly acknowledged this factor and welcomed Jane as someone who cared about her children. She offered to help Jane in any way she could around the boys. She indicated that she

hoped Jane could recognize her as the boys mother and help them to have a good relationship as well. Both Jane and the boys' father were clearly disarmed by this gesture and agreed they wanted what was best for the boys. While this mediator had anticipated having to utilize many strategies to keep the conflict within reasonable limits, the clients appeared to take this responsibility themselves. All parties agreed that the two boys were old enough to have input into the decision and requested to hear what they had to say.

As the two boys were uneasy, the mediator reviewed the main concerns as being able to stay in father's home but wanting to see more of mother. It was also brought to the parents' attention that the boys hoped the parents could support them in their wishes. At that point the two boys added on their own that they found the fighting between the parents very difficult as they loved both parents and appreciated their stepmother's concern for them. Kirk stated that he hoped Jane could help them work out a new schedule of chores so that they could see their mother but do their share of the family work. Both boys wanted to be sure that they could live with their mother if they worked this out with both parents.

Jane appeared visibly relaxed and pleased with what the boys revealed. She stated that the chores could be worked out again. As to planning for the future care of the children, Jane left that for father and mother. Jane



directly thanked Barbara for her support and asked that they speak together at times regarding any problems either one had in working together. She then asked to leave. The boys also asked if they could leave and the two parents developed a plan for the continuing care of the boys. They agreed to vary their decree nisi to joint custody with the main residence being with father. They divided weekend and major holidays. They agreed to a yearly family meeting to plan for the boys which would include the boys and discussion with Eric's wife. Both agreed that if the boys wanted to move this would be planned in family meetings to ensure that the best move possible was achieved. Both identified the desire to include a provision of utilizing mediation prior to going to lawyers if they had future problems they could not readily resolve between them.

While the mediator was aware that the two women had just begun to relate to each other, the initial contact had been positive and it was hoped that the reassurance regarding her acceptance of the family would help the stepmother to be less defensive. The mediator was impressed with the ability of the clients to utilize the process in so positive a fashion.

Case D: This case required a very limited type of mediation. The mother, Adrienne, had recently secured a court order giving her access to her child on alternate weekends and one evening per week. Her access was to be supervised by her parents. Adrienne had a history of

In meeting each parent separately, each parent identified the other as controlling and using the child as a weapon of control. Margaret complained that the father interfered with her boyfriends and Jesus felt that Margaret punished him by withholding the son at different times. Jesus felt Margaret was disturbed and it might not be possible to realistically plan with her. On the other hand, he recognized that the court had been unable to assist him or his son. Margaret for her part claimed that mediation might help as matters were too stormy and the boy did want to see his father.

Josu, the eight year old son, was seen in order to assess what his needs were. At the conclusion of this session the worker indicated that she would call Margaret and the father to have a first joint meeting. Margaret became incensed when she discovered that the lawyer had given the mediator her telephone number and broke off mediation. A letter was sent to Margaret apologizing for what may have seemed like an invasion of privacy and assuring her that the phone number had been destroyed. The mediator reiterated concern about her situation. Another mediator's name was offered so that she could help her achieve the kind of interaction with the boy's father that she described. Margaret contacted the other mediator but by then the father refused this option and had decided to go to court to seek sole custody.

psychiatric problems that had disqualified her from being involved with her daughter, Sarah, for the full four years since the divorce. Adrienne and Charles, the father, were referred to mediation by the lawyers as Adrienne had wanted to commence her weekends on Friday evening and was willing to trade her mid-week evening for this opportunity. Since she needed her parents to be present when she spent time with her daughter this would reduce the demands on her parents. The father had not agreed on his own but had indicated a willingness to mediate the matter.

Before any efforts could be made to begin to ease the situation, Adrienne experienced a profound depression and mediation could not be pursued.

Case E: The parents in this case had been divorced for almost four years. During this time there had been considerable litigation especially in the last two years. Margaret, the mother, had in the previous year accused Juesus, the father, of sexually abusing their son. At the same time she had brought forward an action to end father's access. The investigation by the child welfare authorities and psychiatrists concluded that the allegations were unfounded and raised some question regarding the mother's psychological stability. The court action was dropped and access resumed. About September, 1983 the mother had again commenced action against the father to end his access. The court referee and the lawyers agreed that mediation should be attempted.

## CHAPTER VIII

### DISCUSSION

These families, although few in number, appear similar to other family types and styles reported in the literature. These families had a range of education, income, age of children, length of marriage and so on that are cited in research of divorce mediation population. The families that did achieve an agreement tended to be younger and were no more educated than those who refused or were unable to utilize this process. The range in age of children included toddlers to teenagers. Most of the families had involved the legal system and had been referred to mediation by the lawyers. Although generalizations cannot be made to other divorce mediation populations, some of the process that unfolded is suggestive of further consideration.

For all of the couples that were able to negotiate a successful agreement, the mothers were employed or working toward better vocational opportunities. In keeping with the literature on the changing role of women in society these families appeared to fit this description of women who were both parenting and working. The men, it is argued, had become involved with the children to a larger extent, in part because of mother's involvement in the workplace. In addition, these women had wanted the father to continue to be involved with the children. There

can be no doubt that for this group the ability to recognize the father's involvement appears to be somewhat different than generally described in the literature (Roman and Haddad, 1979; Rosenthal and Keshet, 1981; Wallerstein and Kelly, 1980). It is argued that these women and men reflect the changing marital and family pattern in which women are demanding more involvement from men in child rearing and the increasing evolution of fathering in this society (Ahrons, 1981). Since these families included one woman who may well have been abused, one woman who was experiencing tremendous guilt and the third family who were experiencing early stages of adjustment involving the emergence of a remarried family, it is unlikely that these couples were less conflicted than others who enter mediation.

But more centrally, this mediator's experience was that for these women and men the issue of control was a central theme. This central theme was clearly expressed by all the women, regardless of the success of mediation. For these women, and especially the successful group, their expectation of mediation appeared to be that the mediator would provide an environment that would enable them to speak to their partners as equals. Their hesitancy in regard to mediation was consistently stated as being unsure if their spouse would truly hear them. The men, by contrast, were more inclined to prefer a more aggressive approach, the adversarial system. This

mediator had to spend considerably more time convincing these men to consider mutual conflict resolution as the appropriate forum for resolving parenting concerns. In this regard the encouragement of the lawyers was very important in even considering mediation.

During the process of mediation the mediator had to work with the men to actively listen to the women. By contrast, the women appeared to require greater validation by the mediator when they made suggestions. In keeping with the literature on the differences in gender style, these observations are suggestive of the need to pay more attention to power differentials that are likely to exist.

The women in this sample were consistently more able and willing to recognize the father's involvement with the children. By contrast, the fathers were unable to recognize the mother's parenting. They tended to take a more antagonistic attitude toward the mothers and argue for the child being better off with themselves, often based on the argument that they could better provide for the child. The men appeared, as already noted, to have difficulty in accepting their wives' position regarding the children or to easily consider the options put forward by the women. In the instance of the remarried family it was the mother's open acceptance of the stepmother that most facilitated

the process of mediation. This recognition of father's new marriage was not something that father felt able to request or to even indicate to the mediator as something he identified as needed. This was offered freely by the mother despite the difficulties that had been experienced and her own concerns and view that the new wife was likely contributing to difficulties based on the childrens' report. This attention to maintaining the relationships with all parties may well reflect female values (Gilligan, 1982).

In working with families where there are few or no residues of romantic couple attachment, mediators may need to foster this characteristic. The building and maintaining of viable relationships between the parents and "interested parties" such as new spouses or grandparents can be critical to ensuring the translation of the parenting plan into action. While beyond the scope of this practicum, methods of facilitating them in this regard need to be developed.

The apparent aggressive stance of several of the men as expressed in their description of the mothering offered by the women suggests that men may tend to consider mediation as an arena for gaining as much as they can while having much less regard for mutuality or fairness in the process or outcome. This is in keeping with research findings in other areas of conflict resolution (Deaux, 1976) and in the reported rationale of men who elect mediation (Thoennes and Pearson, 1983). Thoennes and

Pearson (1983) report that men elect mediation when they believe they would not do well in a courtroom. Deaux (1976) found that in the laboratory men continued to push for the highest score even when a more cooperative approach would be just as successful. Women by contrast strive for mutuality in the laboratory (Rubin and Brown, 1975) and work for an agreement that is reflective of distributive justice (Gilligan, 1982). Because of the small sample, research in this area would be important for replication and to further substantiate these observations.

This does not imply that the mediator is not responsible for guiding the process into cooperative negotiations. Rather, joining appeared to facilitate this process by enhancing the receptivity of the two adults to the mediator's report.

The ability to facilitate a parent who has become distant from the child(ren) proved to be a difficult issue. In the one case where the custodial parent had gone to great lengths to eliminate the other parent's involvement, mediation was not even possible. The level of mother's distrust in this case appeared to doom almost any process that focused on parenting and the possibility of increasing father's involvement. Use of techniques to realign this family were much more difficult than anticipated. The resolution or the influencing of these family problems may well be beyond the scope of mediation.

Family therapy techniques, in the experience of this



student, were especially useful in reducing conflict and enhancing the equalization of the parties' power.

Reframing and preempting were very productive in this regard. Joining offered this mediator a means of working collaboratively with the parents rather than attempting to retain control of the negotiation.

Family theory and therapy techniques provided this student with the best means of assessing the parents, the nature of their relationship and the potential needs of the family. Assessment of mediation candidates has been very lacking to date. It is suggested that the development of a brief family assessment protocol would be a useful and necessary tool for mediators.

In applying techniques to facilitate these families, this mediator found that the most successful techniques derived from those of family therapy and gender concerns. These techniques appeared to address the issues of differential power so as to provide a balance to the two parties. In addition, the improvement of the interpersonal sensitivity of men appeared to allow them to be less defensive in considering the womens' suggestions. The power equalization appeared to free the women to speak directly to the concerns and issues they wanted addressed. This, more than anything else, seemed to reduce conflict and allow the two parties to find mutually acceptable solutions. In equalizing the parties this mediator found that the need to retain the control over negotiations in

the hands of the mediator was no longer required. The mediator's role became that of a resource to the family where additional alternatives could be offered. The families were clearly struggling to find their own parenting plan.

To provide the parents with an environment that equalizes power, it is argued, is the main component needed to allow for productive conflict resolution. In its absence the parties are likely to be involved in conflict over pseudo issues and unable to plan for their children. Once the power is equalized, the two parties can negotiate and speak to the childrens' needs and the realities of the demands of their new lives outside of the marriage.

In considering this practicum experience as a learning experience, this student offers several observations. A practicum located away from the university where the student is enrolled presents a number of obstacles for the student. In this student's experience it was very difficult to negotiate the practicum with the university although letters were exchanged at the formal academic level. Fortunately, at the University of Toronto the Dean of the School of Social Work and Dr. Irving were very helpful in finalizing the formalization of the practicum. Secondly, the availability of families for this student was very limited as already described. This may have been less of a problem had the practicum been undertaken more directly at or through the University of Manitoba. As a visiting

student, one's needs as a student are not a primary focus of the department. The evaluation component of the practicum suffered the greatest negative impact of doing a practicum outside of one's own department: There was no evaluative component.

However, the opportunity to work under the direction of experts in mediation such as Dr. Irving and to work with Ms. Goudge who had a great deal of expertise and experience was of incalculable benefit to this student in gaining actual clinical skills in this area. In addition, the environment provided under such supervision spurred this student to a great deal of creative thought which resulted in productive translation of ideas into action.

For other students considering a practicum in a setting away from one's own university this student offers several suggestions and recommendations. First, ensure that every requirement for the practicum has been formally agreed to in writing by both institutions. Secondly, the student must ensure that placement has been formally arranged prior to beginning the practicum. As a visiting student these two conditions are critical. Fortunately, the Dean of the Social Work Department at University of Toronto, Dr. Irving, and Dr. Trute (this student's advisor) were extremely helpful in this regard. Notwithstanding, this student lost almost one month of time before all arrangements were finalized.

Similarly, there can be serious problems in terms of

time provided for supervision. Again, Dr. Irving and Ms. Goudge went beyond the call of duty in making themselves available for providing consultation and direction to this student.

In summary, it is more difficult to work through unanticipated barriers in a practicum outside one's own university, but this needs to be weighed against the potential gain of working with experts in a field. When this practicum was undertaken, few agencies or practitioners had worked and researched mediation extensively. Dr. Irving was and is a leading expert in this area. For these reasons this student has no regrets.

#### SUMMARY

Families in North America have been undergoing a profound change since the early seventies (Price-Bonham et. al., 1983; Bohannon, 1984; Bernard, 1975). The traditional image of the nuclear family as the proto-typical unit has become just an image. As early as 1978 (Ms., 1978) the nuclear family accounted for only 15 per cent of all families in the United States. Even when families where both adults worked were included in the same category, these families only represent a little over 30 per cent of all households. Eichler (1983) reporting on the Canadian society has very similar figures. The proliferation of blended, step and bi-nuclear and non-married families (Visher and Visher, 1979; Messinger, 1979; Esses and Rachlis, 1978) has required the social sciences to rethink the family and to begin to include these families into

theory building and practice issues. No longer are these families perceived as abnormal (McGoldrick and Carter, 1980) but as alternate type of family formation.

The growing rate of divorce has also brought major changes in its wake. The notion of fault as a basis for divorce has become increasingly less common and these changes in social norms have increasingly found reflection in legislation. These changes are serving to destigmatize the families undergoing divorce. More importantly this growing recognition of the bi-nuclear family has resulted in the development of a potentially more helpful approach to reordering these families--divorce mediation.

The potential of mediation as a positive process in reordering families is supported in this practicum. This mediator's experience appears to support the need for greater focus on gender differences in values and approaches to problem solving. The unique contribution that women can bring to this process may have been ignored. Gilligan (1982) has argued that the female experience has frequently been discounted in psychological theory of behavior. In reviewing theories of achievement, personality and moral development, the female experience has been ignored or assumed inferior to that of the male. This has resulted in a construction of psychology that ignores and devalues one sexes experience. When considering family issues, such an approach is especially dangerous.

Further research is needed to assess and measure the

impact and importance of power and gender differences in mediation. It is suggested that as these factors are addressed mediation is likely to produce enduring parenting plans.

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