

'TALK ABOUT CONFLICT': UNDERSTANDING INTERPRETIVE REPERTOIRES  
IN COMMUNITY MEDIATION

A Dissertation

by

ZACH A. SCHAEFER

Submitted to the Office of Graduate Studies of  
Texas A&M University  
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

August 2010

Major Subject: Communication

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## ABSTRACT

‘Talk about Conflict’: Understanding Interpretive Repertoires in Community Mediation.

(August 2010)

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While many studies investigate the mediation styles enacted during conflict resolution, relatively few of them discuss the communicative processes through which discursive structures are reproduced. This dissertation is a case study illustrating how the duality of structure operates. The purpose of this dissertation is (a) to reveal the discursive resources that community mediators use, (b) to demonstrate how mediators assemble their discursive resources to form a community of practice, and (c) to explore power relations between attorneys and mediators.

To understand these issues, I conducted an ethnographic study at a community mediation center employing 25 volunteer mediators. Over 330 hours of participant observations and 41 interviews were completed. Results demonstrated that mediators relied on four interpretive repertoires during mediation: Cultural Competence, Volunteer Pride, Parenting Norms, and Business Professional(ism). They used these repertoires to navigate the tenuous and emotional mediation process. The repertoires provided the mediators with a degree of discursive flexibility in constructing and controlling the

immediate situation, and the repertoires were enacted to serve multiple purposes.

Further, the extemporaneous engagement of issues, emotions, and discursive resources was an essential skill that was cultivated only over time and with practice.

Results also showed that the mediators assembled various repertoires in a number of ways including informal conversations, co-mediations, conference attendance, and organizational meetings. Analysis suggested that the institutional knowledge and discourses provided through formal learning was of secondary importance to developing personal repertoires by mediating as often as possible. In addition, because of the organizing practices of the mediators and the ad hoc nature of the organization, the organizational form of the mediation center was a community of practice.

Finally, results found that the power struggles between attorneys and mediators centered on trying to define the mediation situation using different discursive resources. Establishing control of the environment and working the process were the two main goals of mediators, and the more they took ownership of these goals the more often the conflicts settled. This dissertation suggests that taking control of the mediation process is the first step to empowering the participants and achieving a workable mediated settlement.

## DEDICATION

This dissertation is both a process and product of discourse. It is a result of all the wonderful conversations that I have had the luxury of participating in with colleagues, friends, relatives, my wife, and project participants. Throughout my four years at Texas A&M University, I have learned to appreciate the significance of ideas and the expression of those ideas to others. Personal, social, organizational, and institutional change can be attributed to groups of people who have the vision to see something new and the courage to share that vision with others. This dissertation is dedicated to all the community mediators who shared their vision of peacemaking and empowerment with me. Their passionate and resilient efforts help strengthen community and family relations even while their accomplishments go unnoticed, are underappreciated, and are not financially rewarded. Their altruistic spirit embodies an invaluable aspect of humanity.

This dissertation is simply the first step in a lifelong project of sharing the mediation message with others. Society has depended on a unidimensional, adversarial, and legalistic approach to conflict for too long—it is time to educate people that other options are available and effective, options that are built around a communicative perspective. When people learn to create a space for difficult conversations, we will see improvements in our personal, organizational, and social realities.

## ACKNOWLEDGEMENTS

Worthwhile intellectual endeavors are never the result of individual accomplishment because they are embedded within webs of discursive support. The cornerstone of my discursive support network is my advisor, Dr. Katherine Miller. Not only does Kathy contribute to the clarity and theoretical development of my projects through her astute editing skills, she also encourages me to become a *curious* scholar. She allows me to pursue my own line of inquiry and study communicative phenomena that interest me. Kathy helped me communicate and become comfortable with my identity as a researcher and scholar, and so for that I thank her. Most of all, Kathy welcomes me as part of her family. I am honored to have an advisor who I know so personally, who attended my wedding and danced with my family, and who I feel so comfortable around socially and intellectually. Kathy, thank you for helping make these past four years a fruitful intellectual journey.

Thank you also to my committee members, Drs. Kevin Barge, Antonio La Pastina, and Leonard Bierman, without whom this dissertation would not have been completed. Kevin, thank you for our conversations about social constructionism and discursive psychology, as your suggestions improved the confirmability and dependability of this project. Antonio, thank you for your methodological insights and suggestions over the past four years. You have challenged me to think about my positionality within ethnographic work and helped me remember the important motto, “Do no harm.” Len, thank you for your suggestion about investigating the relationships

between legal and non-legal mediators. This idea helped me understand the power relations operating at the CRC and better understand how people use discourse to define events and enhance their power/knowledge.

I am especially grateful for the grace and patience that my wife Kizzy has extended me throughout this process. Her optimistic view of life was refreshing for my analytic, and sometimes gloomy, view of the dissertation process. I would not have completed this project without her encouragement, praise, and love. She has witnessed my intellectual growth over the past four years and has become part of my identity—she has helped me more than she can know. I also must thank my parents, Maureen and Don, and my brother Josh. Their encouragement, unyielding support, and curious questions forced me to explain my ideas in practical terms, thus helping me articulate the relationship between theory and practice. I am so lucky to be a part of this family, as they formed the foundation of the person that I have become. I look forward to returning to St. Louis and spending more time with you all.

This dissertation would not have been completed without the support, distractions, and humorous interactions with my friends and colleagues. Kevin and Tyson, thank you for getting me back involved in sports and being supportive of all of my ideas, no matter how *tres chic*. We reminded each other that hard work takes many forms, and I will cherish our conversations about religion, politics, and small business ownership. Elizabeth and Claudia, thank you for keeping me well fed and for putting up with my crazy stories and ideas. You are true friends and I am very grateful for our time together. Ryan, thank you for teaching me about literature and helping me develop a

sense of confidence in my scholarship. Dave and Bart, thank you for serving as a living example that friends and family are more important than occupational prestige. By taking jokes over the line (e.g., Lenny Kravitz), leaving outlandish voice mails (e.g., Ulysses S. Grant), and invigorating each other with a sense of optimism and confidence (e.g., thoughtflips), your companionship will be engrained as part of my identity forever.

Finally, this project would not have been possible if not for the passionate and enthusiastic participation of the mediators, attorneys and judges, and conflict resolution professionals. Specifically, thank you to the staff and members of the Conflict Resolution Center. I will miss our conversations and interactions around the CRC. Thank you for granting me access to your world and teaching me a skill that has improved many lives, mine included, in numerous ways. You are striving to make the world a better place, so my only hope is that this project can assist you, if even in a small way, in that noble endeavor.



## NOMENCLATURE

COP	Community of Practice
CPS	Child Protective Services
CRC	Conflict Resolution Center
DP	Discursive Psychology
KM	Knowledge Management

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## CHAPTER I

## INTRODUCTION AND REVIEW OF LITERATURE

*Prior to walking up the wooden handicap access at the Conflict Resolution Center (CRC), I was filled with nervous energy. Anytime I have to give a public performance my body is overcome with angst and feelings of dread, anxiety, and possible failure. I psyche myself out and lose my confidence – for the moment. As I gathered myself next to my car and put on my navy suit jacket, calmness began to pour over me. The confidence started to trickle back into my stomach with the realization that “I know the process of mediation...the disputants do not. They simply want to resolve their conflict quickly and move on from their hurt.” I began to feel better, but then another fear hits me: what about the lawyers?* As this brief narrative reveals, conflict mediation is often a difficult, stressful, and uncertain event; even before the process takes place, and even for the person in charge of structuring the process. The disputants are anxious about solving their dilemma, the attorneys want to advocate for their clients’ positions, and the mediator wants to engage the process in an efficient and empathic way that benefits all the parties. Mediation is rarely a straightforward interpersonal process but rather involves fleeting relationships and power struggles among several different parties. This tenuous situation leads to interesting communicative phenomena.

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This dissertation follows the style of *Management Communication Quarterly*.

Mediation is a process that aims to empower individuals who are emotionally and financially distraught to develop creative ideas and solve their own conflicts. This approach to conflict management often leads to the ownership of personal struggles, reconciling with others, and the closure of ongoing conflicts. In recent years mediation has become a fashionable, reliable, and credible form of alternative dispute resolution. According to the National Association for Community Mediation (2006), there are more than 550 community mediation centers nationwide and over 19,500 active volunteer community mediators. More than 97,000 cases are annually referred to mediation, and 45,000 of these cases are now mediated on an annual basis. Part of the continued growth of the field of mediation is tied to the court system (Baron, 2004). For example, states such as Texas and Florida have enacted a mandatory mediation policy in many family and civil legal matters. The legal mandate to mediate is simultaneously providing the community-based mediation centers with a heightened sense of legitimacy and creating struggles over how to define what constitutes a successful mediation, what is discursively appropriate during mediation, and who should be allowed to mediate.

Community conflicts are rarely simple to solve. Imagine the following scenario. A woman purchases a car on eBay, and although the auto dealership is in a different state, she arranges to have the car delivered to her home state. She drives the car for two weeks and is initially very satisfied with the car—the dealership owner even speaks with her on several occasions about her satisfaction with the car. However, she begins to notice a problem with the tires and takes the car to a mechanic only to discover that the car was previously totaled. She contacts the auto dealer who informs her that she bought

the car “as is.” He even provides evidence of the “as is advertisement” that was posted on eBay. The woman is undeterred and threatens to sue the auto dealer. They both agree to mediate prior to litigation in the home state of the auto dealer, and she flies in for a mediation hearing. In addition to these circumstances, she hires a big city, high-powered attorney whereas the other party is counseled by a small city, good-old-boy attorney. Let’s just say the attorneys do not share the same world view, and neither do their clients.

The woman and the auto dealer might well come from different planets. The woman is a loud-and-proud southern woman who does not shy away from conflict or sharing her blunt opinions, and the auto dealer is a soft-spoken Saudi Arabian immigrant who started his business from scratch and speaks broken English. For the southern belle, conflict is part of life and she thinks the louder you talk, the more effective the argument. The auto dealer believes that public conflict is a sign of personal dishonor—he just wants to get this issue resolved to maintain the integrity of his business. The general manager of his dealership is also present at the mediation to act as his interpreter and ensure that the mediation is fair. It turns out that the general manager is the owner’s cousin, and the manager is a tough negotiator and a competent mechanic. He made the repairs to the car after it was totaled, so he has a completely different perspective about this conflict. In addition to understanding cultural differences and power dynamics during the mediation, you only have four hours to create a dialogue between these parties. Scheduling a second mediation is out of the question, because the woman flew in for this session and is missing work. You could also approach this mediation from a

variety of theoretical perspectives. Should you aim to create a transformational experience, employ a narrative perspective, or enact a client or solution-based approach? From the community mediation center's perspective, what would be viewed as a successful resolution to such a convoluted dispute? Neither party will be 100 percent satisfied. A skilled community mediator knows that she<sup>1</sup> must create rapport with both parties to begin building trust and goodwill between them, and further, she must actively involve and rely on the expertise of the attorneys. What is the most effective way to accomplish all of these goals?

This dissertation aims to understand the discursive resources that structure the complicated community mediation process by blending essential constructs from a variety of relevant literatures. A discursive psychological approach emphasizes the relationship between abstract Discourses and language-in-use by focusing on interpretative repertoires. It is through these repertoires that community mediator's foster communication between disputants and attorneys. Several types of repertoires may emerge in the mediation setting including mediation-specific, legal, parenting, religious, regional, occupational, professional, volunteer, subjective, and cultural repertoires. Further, this dissertation goes beyond describing the repertoires that mediators use by exploring how the community mediators share their knowledge and learn from one another. One lens for understanding how individuals and organizations learn is the communities of practice literature. However, the learning of diverse repertoires does not

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<sup>1</sup> I will be using both masculine and feminine pronouns throughout the dissertation because men *and* women were participants in this project.



occur in neutral settings or interactions. Using a discursive approach to structuration theory that is tied to a Foucauldian understanding of Discourse allows me to highlight the discursive, or language-oriented, aspects of organizational structures.

An organizational communication perspective provides one means to understand how community-based mediation centers successfully organize. The concepts developed in discursive psychology literature (Edwards, & Potter, 1992; Potter & Wetherell, 1987; Sheep, 2006) explain how individuals and organizations (a) engage the mediation practice and (b) manage competing discourses. Discursive psychologists' reframing of discourse as *interpretative repertoires* (Potter & Wetherell, 1987) opens up possibilities for understanding how mediators make discursive decisions in the moment, how discourses change over time, and how the organization assembles competing discourses into a coherent practice. Sheep (2006) proposes that research needs to explore how individuals and organizations discursively manage conflicts as *in situ* accomplishments. This dissertation will draw upon extant communities of practice literature (Hughes, Jewson, & Unwin, 2007; Wenger, 1998) to demonstrate how learning factors into organizing practices. Despite the fact that communities of practice are a form of organizing in which individuals create and manage knowledge through communication, the literature has not adequately grounded the construct in communication theories of practice, power, or agency (Iverson & McPhee, 2008).

As communities become more diverse in ever-increasing cosmopolitan societies (Giddens, 1999), and the efficacy of mediation continues to grow, it is necessary to explore how volunteers in local communities are so successful at managing conflicts

(Hedeem, 2004; Rogers, 1991). This dissertation draws upon existing theory from a variety of fields, a 20-month ethnographic study of a community-based mediation center, and several popular mediation texts to better understand the role of discourse in mediation. In addition, this dissertation will illustrate how the discourse created and disseminated at mediation conferences, workshops, and training sessions are enacted and organized by the community center. The purpose of this dissertation is to (a) extend the theoretical understanding of the communicative processes for how the CRC members and organization use discourse during mediation, and (b) to investigate the interplay of competing discursive resources enacted during mediation.

In Chapter I, I begin by framing the organizational context of the study. Next, I discuss the relevance and explanatory power of a discursive psychological approach to discourse analysis. Specifically, I highlight the reframing of discourse as interpretative repertoires. Once I have established the theoretical approach, I review other literatures that highlight the communicative aspects operating in community mediation. I pose several research questions to address the theoretical and methodological gaps in the literature. In Chapter II, I discuss the appropriate data collection, management, and analysis procedures, offer a more in-depth discussion of how the theoretical approach coincides with ethnographic techniques, and illustrate how this project is a form of engaged scholarship. Chapter III presents the results of my analysis. Chapter IV then summarizes the theoretical and practical implications of this project in relation to extant communication theory and suggests directions for future research.

## **Conflict and Community Mediation**

One aspect of communication that is common to societies of past, present, and future is conflict, because living and working in close proximity to others leads to disagreements. Within communication literature (Nicotera, 1995; Putnam, 2006), conflict is often defined as a disagreement between interdependent parties who perceive an incompatible goal or incompatible paths to achieve a goal. The parties can be individuals, groups, organizations, communities, and entire countries. Although mediation is often framed as a way to manage interpersonal conflicts (Donohue, 2006), this dissertation argues that it is able to respond to conflicts at multiple levels. In addition, mediation presents an interesting backdrop for conflict because the mediator's strategies and styles shift depending on the context. For example, a mediator would handle a situation involving only a divorcing couple and their attorneys much differently than a case involving many parties. When individuals or organizations are in conflict, they are often turning to mediation instead of the court system to resolve their issue, though mediation is only one form of alternative dispute resolution (ADR). The large influx of mediation cases is helping to (a) lower the number of court cases and increase efficiency in the court system, (b) save individuals and organizations large sums of money in the form of court costs and attorney fees, (c) expedite the conflict resolution process, and (d) empower individuals to solve their own conflicts. With successful results such as these, the forms of mediation are continually expanding.

A wide variety of organizational forms are now embracing the process of mediation. Many attorneys now practice mediation in addition to their legal practice, and community mediation centers, peer mediation, corporate mediation, and school

mediation are all specialties that have emerged over the last 30 years. In response to this trend in conflict resolution, many educational institutions now offer mediation certificates, degrees, and programs to their students, as well as encourage faculty to obtain on-site training in mediation skills (Texas A&M, 2009). Even though mediation often revolves around interpersonal conflict, it is a very social process. Communities are strengthened when individuals are empowered to solve their own conflicts through communicative processes such as community mediation (Barge, 2006). Community-based mediations are generally an effective way to promote democratic values and discussion, even when the community mediation centers struggle to define their relationship to the court system (Barge, 2006). Further, community mediation centers can deescalate conflicts before they spiral out of control, can foster civic responsibility, and can refresh diminished relations between community members (Shonholtz, 2000). The current proliferation of community mediation suggests that it is no longer viewed as an alternative to the court system but is rather an equal option for addressing conflicts and grievances (Donohue, 2006). Volunteers are at the core of community-based mediation because they manage the organizations and structure the process. Without volunteers community mediation would not exist.

### **Community Mediation**

The volunteer-based, community mediation center that I worked with in this research—the Conflict Resolution Center (CRC)—mediates a variety of conflicts that lead to unique communication patterns and mediation strategies. According to the CRC's (2010a) website, it mediates divorces, child custody and visitation rights,

landlord-tenant problems, neighborhood issues, personal disputes, property disputes, harassment, employee-employer problems, and consumer issues. Not only do the more than 20 volunteer mediators have to successfully reach settlements on all of these issues to keep the community practice alive, but the mediation process also requires cooperation from the clients' attorneys, the promise to bargain in "good faith" from the disputants, and educational support from national and state-wide mediation organizations. With many local and state court systems mandating that parties mediate before going to trial, more people are beginning to recognize the benefits of mediation. The process allows the individuals to brainstorm and decide on the outcomes of the process rather than relying on an impersonal judge or jury. Further, because the disputants are able to actively participate in the final outcome of the conflict, they have the opportunity to take ownership of their conflict and often leave the process very satisfied. According to the executive director of the CRC, over the past five years the mediators have facilitated final settlements between 80 and 85 percent of the time, which is one indication that the mediation process is effective. Who are these individuals that donate their time to improve their communities?

The research describing the demographic make-up of community mediators is somewhat contradictory. For example, Hedeem (2004) found that "community mediators come from all walks of life, representing every conceivable demographic in the United States" (p. 117), whereas Rogers (1991) reported that "volunteer mediators are predominantly Caucasian, female, middle class, middle-aged and married, have a college education or beyond, and are working in professional occupations in the human

services” (p. 202). Rogers’ research was based on a survey of 400 community mediators in New York state that included urban, suburban, and rural areas. The majority of the mediators at the CRC are Caucasian, middle-aged, middle class individuals with college and graduate degrees. However, there are no meta-analytic studies that verify the demographic characteristics of community mediators. Whether or not community mediators represent one set of demographics, it is clear they successfully mediate a wide variety of conflicts in their communities.

With the increase in the legitimacy of mediation, scholars have addressed how and why this is such an effective form of conflict management. Donohue (2006) outlines four approaches to mediation: mediator-control model, disputant-control model, relational model, and the interventionist model. These can be considered theoretical approaches to mediation because most mediators will blend the goals and assumptions of these models during a single mediation session. For example, a mediator may guide the conversation to certain topics while simultaneously empowering the disputants to solve the conflict on their own. This would be blending the first and third models. Although I suggest that rigid models are not effective at capturing the communicative nuances that arise during mediation, other scholars continue to offer mediation meta-theories. Gaynier (2005) and Folger and Bush (2005) argued about the ethics and legitimacy of transformative mediation, and Bannink (2007) suggests that solution-based mediation should ask participants, “What would you prefer instead of the conflict?” The heart of Bannink’s argument is insisting that mediators should have the disputants focus solely on the ideal outcome and the future, arguing it will lead to a productive mediation. It is

probably counterproductive, however, to oversimplify the mediation process in this manner, as there are many factors that lead to successful outcomes. Metatheoretical conversations are important, especially for ideas that are relatively new or unquestioned, but I suggest that more interesting insights can come from an analysis of the messages, patterns, and rituals that are part of the mediation process.

One of the biggest areas of recent research interest involves analyzing the strategies and styles employed by mediators during the process of mediation. Scholars have created many overlapping labels for the styles and strategies that mediators use. For example, Wood (2004) believes that a mediator's expertise should be matched to particular conflicts, and his analysis found that four mediation styles exist: negotiator, facilitator, counselor, and democrat. Kressel (2007), however, argues that the "strategic style" is the most successful type of mediator. This person aims to move disputants from their positions to their underlying interests through countless probing questions. Goldberg and Shaw (2007), on the other hand, report that the biggest indicator of successful mediators is the ability to gain the trust of both parties and maintain a high level of credibility throughout the process. They found that mediators were able to create trust by using a variety of skills such as creativity, persistence, and intelligence, as well as by relying on their expertise of specific areas of knowledge (i.e., contracts). The categories that are used to classify and assess a mediator's ability to engage their practice often contradict one another and appear to be reformulations of similar ideas.

An important conceptual move to take in the effort to understand mediator strategies is to recognize that these strategies are tied to larger discourses. Mediators are

exposed to these discourses through their training, through their conversations with other mediators, and through their continuing mediation education (i.e., reading articles, attending conferences, etc.). Mediators have different discursive resources available to them which connect specific strategies and styles to institutional discourses of mediation. The institutional discourses may be available, but availability does not guarantee use at the local level when mediating at a community center. This suggests that community centers have the ability to legitimate certain discourses and their accompanying strategies and styles over others. But how does this take place? The following section explores a discursive psychological approach to discourse analysis, which is one means of understanding how multiple sets of discourse interact.

### **Discursive Psychological Approach**

Discursive psychology (DP) has emerged as an effective way to investigate the relationship between discourses enacted on a daily basis and their connections to larger guiding systems of thought. Contrary to traditional social psychological literature, discursive psychology treats discourse as actively producing social life. DP is not interested in analyzing discourse to reveal underlying truths, attitudes, or other psychological constructs but rather discourse is investigated to understand how language-in-use creates different versions of reality for participants. The following section will first briefly illustrate the differences between discursive psychology and social psychology in general, and will then explore the key assumptions and terms that inform and frame this dissertation.



## **Moving from Cognitive Constructs to Discourse**

Traditional forms of social psychology operate under the assumption that language is a clear indicator of underlying cognitive structures. Social psychological literature has been interested in explaining the universal and enduring attitudes, beliefs, and values that underlie human language to explain and predict future behaviors. Of these concepts, attitudes have been conceptually developed and empirically tested in many social settings. Research on how attitudes are related to persuasion is relevant to this project because in the context of mediation, persuasion plays a significant role.

There are several detailed accounts of the attitude construct that aim to explain how attitudes are a primary cause of behavior in persuasive communication situations (Rokeach, 1968; Zanna & Rempel, 1988). Rokeach offered a tripartite model that suggested attitudes are composed of beliefs, behaviors, and emotions, but Zanna and Rempel argued for a unidimensional model of attitudes focusing solely on evaluative beliefs. Both approaches suggest that attitudes are relatively enduring and are difficult to change. This is necessary and important research, but it neglects the role of context, relationships, and inconsistencies in language use that make it difficult to understand how change occurs. The biggest misconception among attitude researchers is that there is some innate static concept that guides actions (Potter & Wetherell, 1987), and that attitude scales objectively capture and measure this elusive entity. Potter and Wetherell identify other problems with attitude research: (a) the meanings of interpretation are limited to the terms on the scale, (b) there is a gap between the translation of the participant's discourse and the analysts' categories, and (c) it treats discourse as a transparent indication of underlying attitudes that do not change. Further, attitude

research is not the only type of scholarship that seeks to understand universal features of human behaviors.

The theory of generative grammar aims to explain the universal ways in which humans assemble ideas into coherent thoughts, sentences, and complex arguments (Chomsky, 1965, 1966). Chomsky's theory suggests that the human capacity to understand grammatical structures is genetic; that is, humans have a natural ability to structure their ideas. His research demonstrates the vast amount of creativity and efficiency it takes to process and make sense of large amounts of discourse, but it still has several limitations. First, Chomsky only examined certain types of data—he excluded dissonant data and explains only how standardized, regulated, and decontextualized discourse functions. That is, he removed data that involved hesitations, mis-starts, and awkward pronunciations, and he also removed any links to the context in which the discourse was used (Potter & Wetherell, 1987). In short, his explanations are very interesting but they do not resemble how discourse is used in the social world. Chomsky's experiments are a form of laboratory linguistic research, but even in these highly controlled linguistic experiments, people still rely on categories to interpret, and express their version of, the world.

In social psychological research, people are assumed to be members of enduring categories, and because of their categorical membership others make assumptions and project certain attributes onto them (Cantor & Mischel, 1977, 1979). People then generalize common attributes and behaviors about the rest of the members of that category based on a relationship to one member. The process of categorization is a social

accomplishment that is achieved through discursive methods: categories clarify and simplify, categories lead to bias, and categories allow similarity to emerge (Cantor & Mischel, 1977, 1979). Although categorization research explains how people simplify large quantities of information, it is not without problems. First, categories are actively constructed and drawn on for many different actions. As a result, biased categorizations are inevitable. Second, categories are theorized to have a fixed structure. Third, categories fail to explain all of the variability of account content because they are assumed to be enduring classifications (Potter & Wetherell, 1987). Oftentimes researchers will create very large categories that subsume contradictory or inconsistent discursive statements, and “the problem with overly broad categories is that consistency becomes an achievement of the researcher rather than a feature of the discourse” (Potter & Wetherell, 1987, p. 123).

Categories are often used to create homogenous associations of other groups or terms. Membership categorization devices (MCD) are concepts that group together several membership categories (Sacks, 1972, 1974). For instance, college groups together teacher, student, education, administrators, and learning. The term device focuses on the constructive nature of discourse – speaking an MCD into existence is an active accomplishment. Potter and Wetherell (1987) argue that “People draw upon knowledge of the organization of categories as a resource for producing economical and intelligible conversation” (p. 129). If humans were unable to conceive of and implement MCDs, then Chomsky’s theory of generative grammar would lose its explanatory power, because categories are the building blocks for our versions of the social world. Thus,

“One of the benefits of the discourse approach to categorization is that it has directed attention away from the cognitive processes assumed to be operating under people’s skulls and towards the detail of how categories are actually used” (Potter & Wetherell, 1987, p. 137).

Overall, attitude research, the theory of generative grammar, and categorization research do an excellent job of demonstrating the complex nature of human thought and advocating explanations to predict future actions and thought-processing capabilities. Specifically, attitudes represent an integral component of human behaviors but are not the only component. Generative grammar is an exemplar of the spectacular creative capabilities of the human mind, and categorization research explains how humans process and make sense of large amounts of information. Where this cognitivist research falls short, however, is the artificial manner in which the theories are constructed. They suppress discursive variability by excluding statements that are contradictory or resemble any form of unwanted variability (Potter & Wetherell, 1987). Further, this research selects certain parts of the discourse to analyze that fall in line with what the researcher is trying to prove. Potter and Wetherell (1987) said, “Experiments are designed to wipe out variability of interpretation and response, indeed, that is supposedly their strength and rationale, although they may be obscuring one of the most interesting features of social life in the process” (p. 40). Language experiments such as these may privilege consistency, but when the research focus is on everyday uses of language, consistency is rarely achieved.

## **Discursive Construction, Variability, and Function**

Discursive psychologists such as Potter and Wetherell (1987) focus on the action-oriented capabilities of language. DP is not trying to develop a new model or understanding of humanity but rather is privileging the use and understanding of language (Potter, 2003a). A DP approach acknowledges that language is used to socially construct different versions of reality, and the theory is applied to human interaction to understand how people create accounts for their actions. It is a process-oriented theory that explains how different categorical constructions are created rather than focusing solely on the categories themselves. DP is a paradigmatic challenge to cognitivism (Phillips & Jorgensen, 2004) because it treats discourse as the primary process for constructing our social worlds rather than an outgrowth of underlying cognitive constructs. For discursive psychologists, discourse covers all forms of communication, both spoken and written, no matter how formal or informal these interactions may be (Edwards & Potter, 1992; Gilbert & Mulkay, 1984; Potter & Wetherell, 1987; Potter, 2003a). Values, norms, and attitudes are revealed through many forms of communication, and DP is able to highlight the ideas, norms, and practices that were once taken-for-granted (Potter, 2003b).

Three terms are central to a discursive psychological approach to discourse analysis: construction, variability, and function. Construction is an appropriate term to discuss how accounts are created for three reasons: (a) accounts of events are constructed out of a variety of pre-existing linguistic resources, (b) construction implies active selection—some terms are selected, others are not, and (c) it emphasizes the volatile and consequential nature of accounts and the actions that emanate from them

(Potter & Wetherell, 1987). Discourse is not an unambiguous, linear, or straightforward means to understand people's actions, thoughts, beliefs, or actual events. Language is much more variable in actual use; however, social psychological "researchers simply remove this variability in their measurements and aggregating techniques because one of the goals guiding their research is consistency" (Potter & Wetherell, 1987, p. 34). Finally, discursive psychological research is interested in the function of different accounts. Function is important because discourses are culturally and historically situated (Phillips & Jorgensen, 2004), meaning the same thing can be described in many ways. Understanding the function of a discursive statement can provide insight into contextual norms including cultural values and historical relationships. Intentionality is an important component of any relationship, and a DP approach is interested in both the intended and unintended consequences of a set of discursive statements. Speakers may discursively construct situations which they did not intend to construct (Wetherell & Potter, 1988). In short, DP includes local and generalized investigations into the function of discourse looking at how individuals use language to justify, explain, question, and promise, as well as serve larger ideological (e.g., legitimizing power) or organizational (e.g., socialization practices) purposes. Wetherell and Potter found that discursive functions are the findings rather than the raw data, and one way to study and understand function is through discursive variation.

Discursive variation is a common feature of talk in all types of settings. When humans converse with one another they are relying on an interconnected set of ideas, symbols, and words—language—and more times than not people will offer different

interpretations of the same account, idea, or object. According to Potter (2003a), “Discourse is the vital medium for action. It is the medium through which versions of the world are constructed and produced as pressing or ignorable” (p. 791). People vary their stories and discursive statements to elicit different reactions from their audience, or accomplish different functions. DP does not deny the materialist reality of interactions but rather “consider[s] the role of those phenomena in terms of people’s descriptions, glosses, categories, [and] orientations” (Potter, 2003a, p. 787). Potter (2003b) says that DP is not suggesting that a description, object, or idea that is constructed through language is untrue, but rather argues that the construction is one version amongst many possible versions. The goal is to capture and understand the function of discourse and to then understand how specific categories are constructed and for what purpose, because “speakers give shifting, inconsistent, and varied pictures of their social worlds” (Wetherell & Potter, 1988, p. 171). Discursive variation often occurs unconsciously and is usually not a form of manipulative or strategic communication (Potter, 2003a). Although construction, function, and variation are important analytic tools within a discursive psychological approach, they are not the unit of analysis.

The unit of analysis in traditional social psychological research is the constructed category, or the end product of a discursive interaction. Moscovici’s (1976, 1981, 1984) research program investigates how interdependent mental schemata (e.g., images) are used to make sense of the communicative exchanges. Again, however, the goal in this research was to identify broad patterns in human behavior that would eventually lead to a generalizable law. For Moscovici, social representations are the ways in which people

understand and evaluate their worlds, and to understand why a person offered a certain account, one must understand the social representations, or arrangement of cognitive concepts and images. Social representations do help explain how mental images are organized, but the theory is not free of flaws. First, documenting empirical evidence of social representations is difficult and ambiguous (Potter & Wetherell, 1987), and second, the theory assumes that consensus exists in the social groups being studied. That is, people's explanation of a social representation is assumed to be consistent among and between social group members. To address these shortcomings, Potter and Wetherell (1987) build off of previous scholarship (Gilbert & Mulkay, 1984; Potter & Mulkay, 1982, 1985; Wetherell, 1986) and offer a more appropriate unit of analysis: interpretative repertoires.<sup>2</sup>

### **Interpretive Repertoires**

Interpretive repertoires draw attention to the systematic organization of phenomena which have traditionally been studied as attitudes, beliefs, and attributions (Potter & Wetherell, 1987). Repertoires reveal the interpretive procedures for the relationship between discursive functions and the process of account construction. Phillips and Jorgensen (2004) note that "Equal stress is placed on what people do with their text and talk and on the discursive resources they deploy in those practices" (p. 105). Thus, interpretive repertoires provide a unit of analysis that can account for the

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<sup>2</sup> Potter and Wetherell originally coined the phrase *interpretative* repertoires, although I will be calling them *interpretive* repertoires for two utilitarian reasons. First, the two words have nearly identical meanings. Second, the latter term is less likely to be misspelled or misinterpreted. Although other scholars inadvertently make this change due to a poor textual reading, my change was contemplated and deliberate.



homogeneity across multiple account constructions as well as the discursive variability within a single account—because all repertoires are anchored around a core set of terms. Interpretive repertoires consist of a limited number of terms used in a particular style and grammatical way, and they are often clustered around a central metaphor, image, figure of speech, description, or habitual form of argumentation (Fairhurst, 2007; Phillips & Jorgensen, 2004; Potter & Wetherell, 1987; Sheep, 2006).

Interpretive repertoires are interesting because they incorporate stable and ephemeral aspects of discourse. According to Wetherell and Potter (1988), “Inconsistencies and differences in discourse are differences between relatively internally consistent, bounded language units” called interpretive repertoires (Wetherell & Potter, 1988, p. 172). In short, interpretive repertoires are discrete units of talk that have some common features but can transform over time as they are enacted in different situations. They are “recurrently used systems of terms used for characterizing and evaluating actions, events, and other phenomena” (Potter & Wetherell, 1987, p. 149). The concept of interpretive repertoires emphasizes that discourses are drawn on in social interaction as flexible resources and they can change over time due to rhetorical use (Phillips & Jorgensen, 2004). In other words, discourses are occasioned. Individuals produce and reproduce interpretive repertoires to accomplish things with their language, which is consistent with the ethnomethodological aspect of discursive psychology (Garfinkel, 1967). Because ethnomethodologists are interested in the rules that people use to make sense of their everyday discourse and interactions, a DP approach is in one sense an exploration of the conscious and unconscious rules people use to engage others.

Wetherell and Potter (1988) remind discourse analysts that “the meaning of an utterance is not a straightforward matter of external reference but depends on the local and broader discursive systems in which the utterance is embedded” (Wetherell & Potter, 1988, p. 169). This sort of analytic flexibility is a constructive feature of a discursive psychological approach, because analyses can focus on both the larger, abstract, and cultural structures informing language-in-use or on the micro-discursive interactions. Inconsistent labeling can be confusing at times, so it is necessary to better explain the terms used throughout this dissertation. Although Alvesson and Kärreman (2000) use little-d-discourse to represent discourse-in-use (see also Fairhurst, 2007), this dissertation labels the micro-discursive interactions *local discourse*. This is appropriate for two reasons. First, the interpretive repertoires (i.e., discourse) are mostly enacted during mediation at the research site (i.e., the local community center). I do not want to generalize the mediation process at the research site with mediations occurring in other locations. Second, these local mediations produce distinct discursive functions and variations. Mundane discursive interactions are always connected to forms of institutional discourse including political, religious, economic, professional, gender, and ethnic Discourses. These macro-structure big-D-Discourses are institutionally and culturally utilized “general and enduring systems of thought” (Fairhurst & Putnam, 2004, p. 7) that transcend one local setting. This dissertation refers to Discourses (with a capital D) as *institutional discourse*. Institutional discourses may be viewed as more stable and enduring than local discourses, but they can still be altered, manipulated, and transformed over time (Sheep, 2006).

In summary, studies of mediation styles and strategies are important contributions that forward the practical application of the field, but these analyses lack conceptual development and fail to tie repertoires to guiding discourses within the field of mediation. Extant studies often presume that mediators are utilizing a single repertoire to structure and manage the mediation session (i.e., “neutrality is always the best solution”), but I have not found this to be true in my personal mediation experiences, conversations with other mediators, or my observations while co-mediating. Although mediators are supposed to remain neutral, they often express value judgments by drawing on alternative, and potentially inappropriate, discursive resources (e.g. repertoires). Kuhn, Golden, Jorgenson, Buzzanell, Berkelaar, Kisselburgh, Kleinman, and Cruz (2008) discuss how individuals have a variety of discourses available to them and how these discourses can have varying effects on how they organize their work lives. Many mediators struggle in deciding which discursive resources, or interpretive repertoires, are appropriate for particular mediations, and they often impose knowledge of a specific repertoire or experience to justify their decisions. Therefore, I propose the following research question:

RQ1: What are the interpretive repertoires that mediators rely on during mediation?

The creation and enactment of interpretive repertoires involves both institutional and local discourses, so we will no briefly look at a communicative approach to institutional theory.

## **Institutional Theory and Discourse**

Institutional theory is an attempt to understand organizational macrostructures from a sociological perspective (Perrow, 1986). Perrow suggests that theorists such as Selznick (1957) and March and Simon (1958) laid the foundations for later institutional theories to flourish by noting the significance of internal and external environments, recognizing that organizations develop their own logic systems, and demonstrating the wide variety of organizational forms. The goal of early institutional research was to explicate the ways in which people produce and reproduce rules, resources, and other bureaucratic structures that form the foundation for organizing processes and organizational forms. Institutional phenomena transcend individual organizations and address broad social processes and problems (Taylor, Flanagin, Cheney, & Seibold, 2001). Thus, formal rules or processes that transcend many organizations are most likely a form of *institutionalization*, which Meyer and Rowan (1977) define as “the processes by which social processes, obligations, or actualities come to take on a rulelike status in social thought and action” (p. 341). Put another way, institutions are those “practices which have the greatest time-space extension” (Giddens, 1979, p. 17). Overall, institutional theories aim to bridge the gap between agency and structure, action and hierarchy, and individual and organizational spheres. Although many scholars privilege the structural side of institutional theory, two communication scholars have tried to address the relationship between institutions, organizations, and individual action.

A primary goal of Lammers and Barbour’s (2006) institutional theory of organizational communication is to understand the relationship between institutions, organizations, and organizational communication. Institutions are often operationalized

in interpersonal terms, and thus, marriage, rituals, family, and greeting customs are investigated as institutional forms. Lammers and Barbour articulate a different type of construct that examines markets, governments, and professions. They argue that an analysis of customs and traditions lacks the link between behavior and goals that is an integral element of institutional analysis. “The institutional perspective suggests a shift toward novel units of analysis, such as the use or invocation of traditions, or more formally, policies, regulations, laws, or contractual stipulations” (Lammers & Barbour, 2006, p. 370). They argue that “institutions are constellations, relatively fixed arrangements, of formalized rational beliefs manifested in individual’s organizing behaviors” (p. 356). Their definition is applicable to this project for several reasons.

First, Lammers and Barbour acknowledge that institutions are present in people’s behaviors, and because behaviors are tied to language, institutions must also be present in discourse. Second, institutional manifestations are formalized rational beliefs, or, in other words, they are explicitly documented and codified in written form. Lammers and Barbour’s (2006) analysis demonstrated that institutions (a) are manifested in practice; (b) are manifested in the decisions we make from our cognitive and emotional belief systems; (c) involve individual actors as carriers of beliefs; (d) do not change quickly or often; (e) are formalized through written and archived methods; and (f) reflect a rational purpose – they guide individuals via knowledge formally stored and followed (Lammers & Barbour, 2006). A discursive psychological application of their institutional theory would need to emphasize discursive statements and interactions. This dissertation aims to understand how *institutional discourse* affects, and is affected by, *local discourses*

(i.e., organizational and interpersonal). The three essential features of institutions are rationality, independence, and formal knowledge (Lammers & Barbour, 2006), and a discursive psychological analysis of institutional discourse must account for these characteristics.

Overall, Lammers and Barbour offer several propositions that are relevant to this dissertation. First, because they claim that communication sustains and reproduces institutions, it is logical to suggest that institutional discourse is reproduced through communication. Second, communication aligns organizing with institutions because there is a bias toward reproduction; individuals aim to reproduce the status quo, or taken-for-granted ways of doing things. Third, formal communication is the mechanism through which institutions operate and organize, though this dissertation argues that informal communication channels are also important. Fourth, the success of boundary-spanning communication depends on the presence of institutional discourse.

Exploring how institutional discourse is enacted in local settings is one way to begin to articulate and better understand the relationship between structure and action. Interpretive repertoires, as the unit of analysis, account for both static and dynamic aspects of discourse, and analyzing the various repertoires will lead to knowledge of the values and norms guiding the organization. However, in addition to identifying the repertoires people use to guide their actions, we must also understand how they learn this information and share it with one another.

Concepts developed within communities of practice theory will provide a lens to better understand how people learn at the community mediation center. According to

Iverson and McPhee (2008), many scholars simply assume that organizations are COPs. Further, most of the organizations analyzed in Wenger's (1998) research program that served as the beginning of the COP concept are well-established, profit-driven bureaucratic organizations with many employees. Community mediation centers, however, operate with very few employees who are often volunteers that have limited interactions with one another, and yet they are still able to maintain mutual engagement, create a joint enterprise, and enact shared repertoires. This dissertation is interested in the communicative practices used to establish connections between ephemeral employees who negotiate work and create a consistent and quality community service. In other words, I aim to investigate how learning occurs in nontraditional organizational forms, so we must now turn to the communities of practice literature.

## **Learning and Knowledge in Communities of Practice**

### **Knowledge Management**

To make sense of the community of practice literature, it is first necessary to discuss how social relations are rooted in knowledge. Human action is related to situational knowledge, or an understanding of the immediate context. Individuals, groups, organizations, governments, and entire societies create and use knowledge to guide their daily actions. An important question is how do these different entities remember and manage the large quantities of knowledge? In other words, how do they *learn*? Although knowledge has been defined in many ways, organizational knowledge is often equated to information processing (Brown & Duguid, 2000; Zorn & Taylor, 2004), sense making (Weick, 1995), and studies of knowledge workers (Drucker, 1993).

Because knowledge is an important, contested, and dynamic part of organizational life, scholars and practitioners have devised ways to manage it. These knowledge management (KM) programs have led to many theories on “the nature of knowledge” and how organizations should manage knowledge. Exploring how an organization creates, uses, and distributes its knowledge provides insight into the organizing features and communication patterns of organizational members, and thus explicates one way in which organizational learning takes form.

In an effort to deal with the complexities of knowledge, organizations have turned to a variety of KM programs. The lack of KM in any organization can create gaps of knowledge that allow information to go unmanaged. Different size organizations will require different processes to address KM inefficiencies. For instance, a small-scale initiative could rectify KM problems by providing a centralized database of information and establishing more opportunities for interaction among organizational members. In short, when an organization struggles to (re)constitute itself, it needs to implement *information-based* and *interaction-based* KM systems (Demarest, 1997; Iverson & McPhee, 2002). Although organizational knowledge research offers the aforementioned systems to manage knowledge, there are still some large gaps in the understanding of organizational knowledge. For instance, most of the KM research examines knowledge in an isolated, individualized manner. That is, organizational knowledge is treated as an independent or asocial phenomenon. Although there are a few exceptions (Brown & Duguid, 2000; Orlikowski, 2002), they do not provide a communication-based analysis for their theories of knowledge and focus more on information processing. As Iverson



and McPhee (2002) said, “Communities of practice (COPs) [are] a theoretical construct for understanding the interactive roles of information systems and people,” and they suggest that COPs are one way of better understanding how KM is “negotiated communicatively between people” (p. 260). In light of the relationship between knowledge, knowledge management, and communities of practice, we now turn to relevant COP literature.

### **Communities of Practice**

The theoretical constructs from the community of practice literature represent a framework for analyzing organizational communication patterns. As Wenger (1998) says, “Practice is about meaning as an experience of everyday life,” (p. 52), and the goal is to better understand how organizations create and manage those meanings. The idea of establishing a community of practice within a well-established organization is, in essence, a means of learning from organizational members in a nontraditional manner. Lave and Wenger (1991) articulated the original proposition regarding a community of practice by first arguing that participative learning is a more appropriate metaphor than acquisitive learning. They illustrated that learning is a central component of all productive organizational practices and does not just occur in educational settings. Seven years after the initial theoretical work on how organizational members learn, Wenger (1998) extended the idea of a community of practice (COP) as a way to explain how organizational members learn when embedded within information environments. Recent research has explored ways to cultivate COPs in different organizational settings (Wenger, McDermott, & Snyder, 2002), although this has been critiqued as the

commercialization of learning and another passing business fad (See Barton & Tusting, 2005; Hughes, Jewson, & Unwin, 2007 for examples).

Although these critiques are justified and significant, Wenger developed a set of core ideas to explain how people *interact* as collectives and carry out daily activities. These smaller collectives often form in larger organizational structures such as educational institutions, religious organizations, corporations, and nonprofit organizations. The smaller collectives are often distinct from the larger organizational form, and it is through these smaller groupings that people learn things about their role in the organization. The groups, or communities of practice, are characterized by three essential elements—mutual engagement, joint enterprise, and shared repertoire—and scholars have used this basic theoretical structure to study many types of organizations and the communication processes within them (Wenger, 1998; Wenger, McDermott, & Snyder, 2002). Before further defining the three key terms, it is important to first look at how the COP literature has evolved.

Scholars have taken Wenger's theoretical argument and tried to expand, critique, and apply it in many different organizational situations. Tusting (2005) critiques the COP model for not focusing enough on the constitutive ability of language to create meanings. Tusting and others (Barton & Tusting, 2005; Billett, 2007), have suggested that the relationship of language and subjectivity is underdeveloped within COP literature and they offer ways to address this theoretical inadequacy. For instance, Tusting says that the field of critical social linguistics can highlight the centrality of language in COP theory, and although Wenger acknowledges that meaning making

cannot be reduced to language alone, Tusting argues that this does not go far enough. Tusting draws on semiotic theory to suggest that practice, meaning making, and language combine physical and symbolic resources, and this dynamic process affects the levels of participation and reification in COPs. In other words, language is a complex process that involves intersubjectively created meanings between organizational members, and it is only through language, and specifically communication, that the community practice is carried out and meanings are negotiated and patterned over time (e.g., reified).

The process of negotiating meaning is also of central importance to COP theory. For instance, Engestrom (2007) is interested in how novices and experts communicate with one another, which is particularly interesting for this project because there are a wide variety of levels of experience represented among organizational members. Engestrom also argues that COPs emphasize flexibility, innovation, and the ability to create knowledge in unforeseen directions, and this creative enterprising can emerge through the interaction of members with different levels of experience. Hughes, Jewson, and Unwin (2007) note that “an important area of investigation...is to find out under what circumstances communities of practice defend established truths and under what circumstances some or all of the members come up with novel ideas and procedures” (p. 174). Exploring differences in how new and veteran organizational members engage their practice and share “tricks of the trade” begins to highlight the truth value tied to different sets of discourse. By exploring which strategies, discourses, and meanings have

truth value (i.e., meaning or significance), this project examined the core features of COP theory from a communication perspective.

By highlighting the communicative processes that constitute COPs—showing how they work—Iverson and McPhee (2002, 2008) have further developed concepts from the original COP model. They argue that a COP is a synthesis of processes, or “knowing in practical, social application; on learning in interactive practice; and on community as a web of relating” (p. 177). In short, Iverson and McPhee are interested in knowing rather than knowledge (Orlikowski, 2002) and have analyzed the three core components of COPs to demonstrate how knowing unfolds: mutual engagement, joint enterprise, and shared repertoire. Mutual engagement means that members interact with each other in many different ways, and these patterns of interaction help form the COP. The individuals engaging in interactions have a common endeavor, which is called their joint enterprise. Within the common endeavor, individuals create a shared repertoire of familiar resources such as language, strategies, routines, and information. The shared repertoire also allows individuals to express their identities as members of the COP (Barton & Tusting, 2005). Some of the outcomes associated with COPs are that individuals learn from each other about their common endeavor, develop effective interactions, and create and discuss their identity as a COP—or begin cultivating their *practice* by engaging in knowing-with-others (e.g., creation of social knowledge). Wenger (1998) says that “historical and social context gives structure and meaning to what we do” (p. 47). Practice is how the COP members conduct their daily tasks and communicate to each other about these tasks, and this process is always positioned

among the interactions and experiences of the surrounding members, as well as the larger organizational context and information environment.

A final COP concept important to this dissertation is locality. Wenger (1998) discusses locality as a way to suggest that a community of practice constitutes a level of analysis. Identifying every type of collective as a COP would render the concept meaningless, but playing with how COPs define their membership and boundaries can potentially reveal interesting results as to what messages and symbols constitute membership qualifications. Further, Wenger differentiates between local and global discourses and the profound influence that discourse has on learning, practice, individual experience, and systems of thought. Wenger (1998) states:

What can be called knowledge, therefore, is not just a matter of local regimes of competence; it depends also on the orientation of these practices within broader constellations. Yet, whatever discourses we use define what knowledge is, our communities of practice are a context of mutual engagement where these discourses can touch our experience and thus be given new life. In this regard, knowing in practice involves an interaction between the local and the global. (p. 141)

Wenger's discussion of local and global discourse supports the conceptual approach to this project, which is to investigate the local and institutional discourses of mediation, to understand how mediators make sense of these discourses, and to determine how these discourses interact "in practice." The communities of practice literature represents one lens to understand how groups of people learn their work roles and organizational values

outside of formalized socialization processes. To understand how mediators learn and share knowledge in less traditional ways, I propose the following research question:

RQ2: In what ways, if any, do Conflict Resolution Center members assemble various repertoires together as part of a community of practice?

By investigating how the mediators sustain mutual engagement, negotiate joint enterprise, and create a shared repertoire, as well as engaging the mediation process through my participant observations, I will begin to understand the significant repertoires (Potter & Wetherell, 1987; Sheep, 2006) that structure and shape the decisions made by mediators. When drawing from a variety of discourses during mediations, the mediators often invoke guiding systems of thought (Foucault, 1972, 1980) such as proper parenting procedures, family values, professional norms, and sociocultural norms, to create credibility during the mediation. Data from my interviews, participant observations, and organizational documents form the pool of knowledge from which I begin to draw my conclusions to the first two questions. However, I suggest that it is not only necessary to determine what repertoires are available to the mediators but to understand the power implications underlying discursive interactions. To further investigate what is and isn't acceptable during mediations, we must understand how the discourses can be drawn on as rules and resources and transformed at the local level (i.e., during mediation at the CRC). The next section discusses how a discursive approach structuration theory can be used to understand the relationship between power, knowledge, agency, structure, and discourse.

## **Discursive Approach to Structuration Theory**

Structuration literature is large and complex, so I will first highlight the overall goal of the theory and then position it within a discursive framework. Giddens (1984) offers an analysis of human struggles over being (reproduction) and doing (transformation) by providing scholars with a detailed theory and vocabulary for how systems reproduce themselves. His project was an attempt to overcome dualisms—epistemological and ontological polarizations that have plagued the social science for decades—by offering a theoretical position that forms a methodological and linguistic blueprint from which to engage future projects. Structuration theory (ST) has been labeled a meta-theoretical lens (Poole & McPhee, 2005), an interpretive heuristic device (Banks & Riley, 1993), and a methodology (Barley & Tolbert, 1997). In general, ST looks to explain the relationship between social systems and human practice by describing their mutual dependence on the production and reproduction of structures (Giddens, 1984). Structures serve as both the end and means throughout the process of producing and reproducing a social system—Giddens calls this the duality of structure. Rules and resources are the structures that people use to reproduce the patterns that constitute social life, and ST emphasizes the role of these processes in constituting groups, organizations, societies. ST explains how systems sustain themselves over time through specific practices such as meaningful patterns of communication.

Many organizational theories focus on communicative interactions (i.e., micro-interactions) and language-in-use, whereas a discursive approach to organizational theory highlights the daily use of discourse in combination with the macro-structural rules and resources that form the foundation of most organizations. A discursive

approach to structuration theory parallels the impetus advocated in discursive psychology to explicate the dualism between everyday discourses enacted by individuals and the larger, abstract, institutional discourses that inform the local discourses. The mediating structure that actors use to bridge the micro and macro discourses are interpretive repertoires, which Giddens (1984) calls interpretive schemes. These fluid structures represent the “modality through which [institutional] discursive structures are instantiated at the [local] level of communicative interaction, and through which communicative interaction can reproduce or challenge such structures” (Heracleous, 2006, p. 119). In other words, interpretive repertoires represent the blending of active decisions on the part of the individual communicator—enacted in everyday settings at an interpersonal or organizational level—infused with formalized, static institutional discourses that inform daily actions. According to Heracleous (2006), “Discourse is viewed as a duality of communicative actions and deep structures, recursively linked through the modality of the actors’ interpretive schemes” (p. 108). The way in which individuals and organizations vacillate between the changes they make in-the-moment to institutionalized discourses, captured by the idea of interpretive repertoires, is just as important as the structural foundations of those discourses. Social actors recognize that they must use certain discourses to gain legitimacy and build credibility (Heracleous, 2006); thus, while substantiating their habitual forms of argument (Potter & Wetherell, 1987), they are also enhancing their individual—and by extension—organizational, authority.



Heracleous (2006) summarizes the approach advocated in this project, saying, “Discursive structural features are thus used as a resource for effective argumentation which is categorized by a ‘seeming’ probability” (pp. 114-115), where actors offer different accounts of the world (Potter & Wetherell, 1987)—aiming to validate their version. In any situation where someone is offering their version of an event or idea, there will always be alternatives to make sense of the reality in a different way. This acknowledgement of difference draws attention to the notion of power, and the next section highlights some important concepts from the work of Foucault.

### **Foucauldian Approach**

Comparing the official discourses espoused during mediator training to how mediators actually manage competing discourses contains power implications including the power to reach a settlement, power to empower the parties to own their issues, and the power to define certain behaviors in normative ways. The struggle to define which discursive resources are viewed as legitimate and capable of being used in mediation sessions is an ongoing, complicated interaction among the attorneys, mediators, and community-based organization. The mediation process is not neutral and there are several levels of power operating as the mediation unfolds. Whether or not the mediation gets defined as a mere extension of the courts (i.e., legal focus) or an alternative to the courts and a community resource (i.e., non-legal, communication focus) has power implications for the efficacy of mediation. Further, because many judges order cases to mediation before they are heard in court, mediation is often viewed negatively by attorneys. They find it is another hoop they have to jump through before they “get their

day in court,” adding another power dimension to the process. In short, people are constantly struggling for power to define the situation and solve their problems during mediation.

Another way of thinking about structuration theory is that it explains how individuals, groups, and organizations struggle for power. The power can come in the form of social influence, prestige, material wealth, and knowledge. Because managing competing repertoires can have personal ramifications for multiple parties, it is essential to understand which repertoires are invoked most frequently and for what purpose. In community-based mediation, the mediators and attorneys rely on power that is derived from knowledge of particular discourses to forward their agenda. Power is thus created, negotiated, and transformed during mediation while mediators are trying to help resolve a disagreement in the “best interest” of both parties. These power dynamics are more complex than one might think. For instance, there is a struggle to negotiate the relationships of authority and credibility between the mediator and the attorneys (if present), there is a struggle for the mediator to create and maintain credibility in the eyes of the disputants, and there is an additional level of power being negotiated between the disputants and their attorneys as they struggle to determine what are appropriate levels of attorney advocacy and decision making authority. Finally, there are inanimate variables that affect the power struggles during the mediation process, such as using time and context as a resource to move the session along. To better engage the relationship between discourse, power, knowledge, and context, it is necessary to briefly discuss the work of Foucault.

A Foucauldian understanding of the world suggests that knowledge is nothing more than discursive systems of power, and therefore, no one is independent of power relations or discourse. Foucault (1972, 1980) says that we cannot escape the knowledge systems because we are products of them. Because analyzing power means looking at institutions (Foucault, 1980), a Foucauldian perspective aims to understand the creation of power and control through discourse. Therefore, it is important to note that overarching systems of thought (i.e., institutional discourses) have ramifications for how the mediator and disputants view their relationship to each other and experience the process of mediation. Working within a Foucauldian perspective, Mumby and Clair (1998) argue that organizations are sites of competition where different groups compete to shape reality through discourse—including specific events such as mediation. Even within organizational settings, it is necessary to recognize that meanings are often closely aligned with the constraints and opportunities afforded by context.

Critical scholars advocate that context creates meaning. Foucault extends this argument and says that we are all situated in specific discursive histories that shape our understanding of how the world works. He believes that power relationships and struggles are an inherent part of reality, and one's ability to find truth and significance in life is derived and limited to the different discourses of that day (i.e., repertoires, discursive resources). Applied to this dissertation, this may suggest that individual mediators are powerless to the effects of guiding repertoires and powerful social actors (e.g., attorneys), but I use concepts from structuration theory, communities of practice, and discursive psychology literature to illustrate that mediators do have agency, even

amidst such powerful discourses and actors. This project explores (a) the practices of mediation at a community-based mediation center, (b) the practice of mediation as an institutional entity (Nowell & Salem, 2004), and (c) how the local and institutional discourses interact during mediation. In addition, the other discourses that compete with mediation discourse, or alternative guiding systems of thought (Foucault, 1972, 1980), have implications regarding what is and isn't considered knowledge, truth, or significant. In short, I am using Foucault to illustrate that reality is contextually based on the discursive resources available to us, and that power relationships are a part of the mediation process. To address these issues, I propose the following research questions:

RQ3: What are the power implications of community mediation interactions?

To clear up any confusion surrounding labeling, Table 1 highlights the relationships between the multiple ways of approaching and labeling discourse. A discursive psychological approach reframes discourse as interpretive repertoires. It suggests that language enacted in daily situations is always a part of larger, abstract guiding systems of thought. The goal of this approach is to explore how the repertoires (re)constitute abstract Discourses. The communities of practice literature argues that local discourses are dynamic manifestations of global discourses, which is a very similar argument to traditional discursive labels of little-d discourse and big-D Discourse. A discursive approach to structuration theory aims to explain how structures, Big-D Discourses, are formed and performed during communicative interactions—or in other words it looks not at organizations or organizing but both of these concepts simultaneously. Finally, the argument put forth in this dissertation suggests that local discourses are dynamic

manifestations of institutional discourses. The local discourses, also called interpretive repertoires, are dynamic because they may be centered on a common theme, metaphor, or habitual form of argumentation but they can shift form depending on the context and interactive participants. This dissertation examines an extemporaneous approach to discursive stability. That is, mediators practice and prepare for what they will say and exude a general knowledge of mediation-centered and subjective concepts, but in each mediation the discourse comes out differently.

Table 1: Diverse Labels for Discourse

	<b>Language-in-Use</b>	<b>Abstract Discourses</b>
<b>Discursive Psychology</b>	Interpretative repertoires	Foucauldian systems of thought
<b>Communities of Practice</b>	Local discourse	Global discourse
<b>Discourse Analysis</b>	Little-d discourse	Big-D Discourse
<b>Discursive Structuration</b>	Communicative Interaction	Structures
<b>Dissertation Argument</b>	Local discourse	Institutional discourse

In summary, Chapter I has shown that organizational scholars have been interested in the relationship between agency and structure, or language-in-use and guiding systems of thought, for a long time. This dissertation makes several contributions to the field of organizational communication. First, this project operationalizes how discursive change takes place by demonstrating how members create, maintain, and transform interpretive repertoires. Second, it investigates and theorizes about a nonprofit, volunteer-based organization to better understand how people learn in nontraditional organizations. Because most of the communities of

practice literature has looked at large, commercial organizations, this project shifts the analytic emphasis to community-based organizations. Third, this dissertation examines power from a variety of angles to understand the relationship between mediators and attorneys. Fourth, this dissertation highlights how institutional discourses enable and constrain mediators. Chapter II addresses the methods through which these nuances were investigated.

## CHAPTER II

### RESEARCH METHODOLOGY

To better understand how individuals and organizations use interpretive repertoires to organize the mediation process, I conducted a 20-month ethnographic study at the Conflict Resolution Center (CRC)<sup>3</sup>. In this chapter, I begin with a discussion of the reasoning behind my decision to use ethnographic methods. Next, I articulate the role that engaged scholarship plays in this project, followed by a description of the organizational setting and research participants. Third, I explain the data collection techniques and data management instruments. Finally, because I serve as the research instrument for this study, I highlight my own positionality within the research project, including how my goals, theoretical sensitivities, and expectations influenced the research process.

#### **Methodological Choices**

Methodological choices should be guided by the research questions and the theoretical issues being addressed. This section details (a) why I chose to use qualitative methods, (b) why this project is guided by interpretive assumptions, and (c) how this project operates from a social constructionist approach to the world.

The goal of qualitative research is to holistically understand and present research findings in a manner that involves symbols other than numbers. Although numbers may be an important symbol during the research process and statistical procedures are useful

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<sup>3</sup> To ensure confidentiality, pseudonyms are used for all participant's names, organizations, and locations.

tools to explain findings, qualitative research is more concerned with understanding the participants' actual language rather than a quantified or standardized version of their meanings. In addition, Lindlof and Taylor (2002) said that "qualitative inquiry is a uniquely personal and involved activity," (p. 5) whereas quantitative studies are often depersonalized and decontextualized. Strauss and Corbin (1998) further explain the differences between these techniques, arguing that qualitative methods are useful when the research "attempts to understand the meaning or nature of experiences of persons" in localized settings (p. 11).

The terms *qualitative* and *interpretive* are often used interchangeably, but I would like to highlight some key differences between the two concepts. Interpretive research is accompanied with a set of metatheoretical assumptions that form a framework for how to investigate communicative phenomena. Interpretive scholars believe that reality is intersubjectively constructed through language and action (Putnam, 1983) and that communication is constitutive of reality. The social world is the process and product of communication as people create meanings about the world through discourse and interaction with others and then use that discourse to make sense of the world (Frey & Sunwolf, 2005). Meanings are found in people rather than objects or structures, which is why a large component of this project involves qualitative methods such as interviews and participant observations. These methods are used to accomplish the main goal of interpretive research: create an understanding of a communicative phenomenon through the holistic description of patterns of meanings and the implications of those meanings on social actors and social structures. In short, this



project represents an ideagraphic understanding of localized, emergent meanings rather than a set of generalized predictions about human actions (Putnam, 1983). The understandings gleaned from this project are contextual and cannot be used to produce causal laws regarding future interactions.

A specific type of qualitative research that emphasizes the contextual nature of knowledge is ethnography. Ethnographic research involves writing about particular aspects of a culture to create comprehensive descriptions that lead to understanding. To accomplish this, the researcher immerses himself in the culture to understand, from the participant's point-of-view, what serves to define their understanding of reality (Pettigrew, 1979; Martin, 2002). The goal is to invite others to view the world from the participants' vantage point, and because people speak their meanings into existence, paying attention to language is one way to tap into their worldview. Leeds-Hurwitz (2005) says that effective ethnographic accounts help an outsider competently communicate within a foreign culture and that within communicative studies, ethnographers should view ethnography as a process, a product, and a theory about human nature. Ethnographic methods include systematic and rigorous descriptions, analyses, and interpretations of cultural interactions and manifestations that take place at multiple levels (i.e., interpersonal, group, organizational, and institutional). The product of ethnographic research is the text itself that provides a snapshot into the cultural workings of a particular group of people. The product represents a form of cultural knowledge and entails the non-distinction between the knower and the known. Ethnography blurs traditional boundaries between the researcher and the research

participants leading to an interdependent or subjective epistemological position. The researcher depends on fostering relationships with the research participants to tap into their understanding of the world. When researchers are the research instrument they have a direct influence on the cultural setting under observation, and thus, they must account for how biases, expectations, and theoretical sensitivities might inform the research process. Acknowledging that the research process is value-laden is a cornerstone of competent ethnographic accounts. This axiological confession demonstrates an understanding and acceptance of the significant roles of time and experience.

The research findings in any study involving human beings are partial, selective, contingent, and situated (Bochner & Ellis, 1996; Cheney, 2000). No one study can capture all the meanings necessary to provide the “truth” of a situation, so interpretivists recognize that our research provides partial understandings. We select parts of a context that are relevant to our research questions and describe those elements as holistically as possible. Our results are contingent or tentative because they will change as new theories, ideas, and forms of organizing emerge. Finally, our work is situated in a particular place and time, and Leeds-Hurwitz (1992) calls this type of scholarship “particularized.” People do not often consciously think about every word they speak, but the spoken words still serve particular functions. This study needed to capture those nuances in different situations.

With one of the focal points of this project being language-in-use, it was appropriate to use a variety of interpretive methods to effectively document and analyze the data. Specifically, this study uses qualitative interviews, participant observations,

guided conversations, and document analysis to illustrate the nuances in language use among mediators, CRC staff, attorneys, judges, and alternative dispute resolution professionals. Lindlof and Taylor (2002) suggest that most language and social interaction research focuses on the detailed level of talk and neglects other symbolic forms of action that are not directly recorded and transcribed. However, this project represents a hybrid form of discursive scholarship that aims to understand the everyday forms of discourse used during mediation (i.e., documenting talk through recording and transcription) and the abstract discursive structures that guide the field of mediation (i.e., documented through ethnographic participant observations, expanded notes, and analysis of organizational documents). Although ethnographers are closely tied to their settings and discourse analysts are more removed, this study moves back and forth along a continuum of attachment-detachment depending on the nature of the interaction. For instance, when I was mediating a dispute, I was not able to actively record or take in-depth notes during the process, so I would expand my brief field notes as soon as the process was concluded. This is more of a pure ethnographic technique in that I was part of the process and directly shaped the interaction, whereas during the qualitative interviews I took on a less active role and allowed the participant to construct the social situation with their stories, examples, and accounts.

A social construction perspective is really an umbrella term that subsumes many different approaches. All of the different perspectives focus on the production of meanings, identities, and organizing. In general, a social construction perspective privileges production over product (Allen, 2005) and suggests that communication is the

primary process for creating and organizing our social worlds. This study argues that scholars should explore both the process and product of communication by articulating a materialist approach to social construction (Lannamann, 1995). Allen (2005) writes that a “‘materialist’ approach to social constructionism urges researchers to attend to details (e.g., products) of interaction (e.g., processes) because those material details influence and are influenced by sociohistorical contexts” (p. 39). For this project, I focused on the mediation interactions, the history of the mediation center, the mediation field as a whole, and the way language shapes each of these settings and interactions.

Human action and language are real because they can be observed, documented, and analyzed just like any organic or synthetic product. The type of social construction advocated in this study follows Pearce’s (1995) discussion of how human actions are just as real as human products, such as a *kick* being as real as a *brick*. People are embodied, material individuals acting and speaking in real contexts. Because social constructionists assert that meaning arises from communication within and between social actors, they believe it is necessary to investigate the patterns of language that create, sustain, and transform social systems, emphasizing knowledge development (e.g., construction) and the centrality of human interaction (e.g., the social; Allen, 2005; Berger & Luckmann, 1966; Burr, 2003; Galanes & Leeds-Hurwitz, 2009). Social constructionists believe that meanings are intersubjectively co-constructed in particular contexts rather than by individual, autonomous decision makers and key assumptions of this approach include: (a) questioning taken-for-granted ways of doing things in the world (Burr, 2003); (b) acknowledging that knowledge and meanings are culturally and historically situated

(Allen, 2005; Phillips & Jorgensen, 2004); (c) emphasizing that communication is constitutive – it creates things and ideas (Galanes & Leeds-Hurwitz, 2009); (d) realizing that all human actions have consequences (Burr, 2003; Galanes & Leeds-Hurwitz, 2009); and (e) demonstrating that specific occasions (e.g., contexts and their accompanying discourses) narrow the availability of meaning-making. The theoretical approach and methodological choices in this study are consistent with the assumptions guiding social constructionist research.

### **Engaged Scholarship Approach**

Most traditional forms of interpretive research aim to create a holistic understanding of human processes, and the typical audience of our research reports is other researchers and academics. I am the first to admit that building knowledge is an important first step in increasing our understanding of the social world, but I believe scholars need to *do* something with that knowledge. Engaged scholarship is a nontraditional type of research which aims to simultaneously build knowledge and solve real world problems for people and organizations. Organizational scholars who practice “engaged research” enthusiastically pursue the application of knowledge in order to change or improve some aspect of the organization with which they are working. An ancillary goal of this project is to use the newly discovered knowledge to improve the mediation practices of the participants and the future training methods of the Conflict Resolution Center. This type of scholarship goes by many labels, so this section begins by positioning my study within this conversation.

At the 7<sup>th</sup> annual conference on engaged communication scholarship, Putnam (2009) challenged scholars to position themselves within one of the “four faces of engagement” to better understand and articulate the conceptual tools used to change the social world: applied communication research, collaborative learning, communication activism for social justice, and practical theory. Although each of the four faces has many important characteristics, for the purposes of this section I will only highlight the relevant aspects. Putnam’s (2009) articulation of the first face of engagement, *applied communication scholarship*, is in line with Frey’s (2009) suggestion that such scholarship should be directed toward other scholars and aim to produce new and useful vocabularies to solve practical, real-world problems (see also Frey & Carragee, 2007). The vocabularies that emerge as a result of the research process are created by scholars who are viewed as experts by the research participants. (for a robust and widely accepted definition of applied communication scholarship, see Cissna, 1982). *Collaborative learning* is the second face of engaged scholarship and emphasizes community-based participation, defines what a community is and who should be included, and co-creates useful vocabularies through conversational partnerships. The third face is *communication activism for social justice*, which advocates for economically and socially underrepresented individuals and groups. Social justice research aims to make a difference in the lives of those who are disadvantaged by working with them to be decision makers – it highlights the ideas of action, change, and advocacy. The final face of *practical theory* is concerned with engaged reflection with research participants and

creating a recursive relationship between theory and practice. Its activities are rooted in joint problem analysis and a shared ownership of projects (Putnam, 2009).

This study is an engaged project and aims to contribute useable knowledge to the Conflict Resolution Center in several ways. First, I acted reflexively throughout my field work and built in specific opportunities for reflective conversations with the organization (e.g., practical theory). Second, I co-constructed the research questions, interview protocol, and plan for using the results together with the community organization (e.g., collaborative learning). Third, I addressed real-world issues and created useable knowledge (e.g., applied research). Finally, I helped serve financially disadvantaged individuals by working with them to take ownership of their conflict, and I assisted an under-resourced organization through the development of training materials and participation in training as a communication expert (e.g., communication activism for social justice). As an activist scholar, I paid attention to the choices I made and the effects they had on the organizational members, always cognizant of whose interests I was privileging (see Frey & Carragee, 2007). Overall, I fulfilled multiple roles for the CRC: volunteer mediator, communication expert, organizational structure and public relations consultant, and mediator trainer. I made the shift from standing by and observing, describing, and analyzing an organization that assists under-represented individuals (i.e., third-person-perspective-studies) to “get[ting] in the stream and affect[ing] it in some significant ways” (i.e., first-person-perspective-studies; Frey & Carragee, 2007, p. 6). In short, this study is a hybrid form of engaged scholarship that

encompasses processes from each of the four faces, which I will call *holistic engagement*.

One of the goals of this project has been to translate the knowledge accumulated along the way into a useable form to improve the organizational practices of the CRC and provide the mediators with a greater variety of linguistic resources. Petronio's (1999, 2002, 2007a, 2007b) translation scholarship highlights several ways to create a shared understanding of research findings (e.g., useable knowledge). Because translation scholarship is an attempt to make research concepts and findings accessible to practitioners (Frey, 2009), I engaged in several methods to translate research findings into workable knowledge. These included improving and creating mediator training materials, participating in mediator training sessions as an instructor, participating in iterative learning conversations with the executive director of the CRC, and conducting an open-invitation presentation to disclose my findings to the CRC.

Only one organization, the CRC, is the focus of this study for several reasons. The first reason is utilitarian in the sense that negotiating access to and compiling data from several organizations is a time-consuming endeavor for a single researcher. Second, and more important, case studies such as this project provide scholars with an opportunity to document, analyze, and reflect on the relationship between theory and practice. Praxis, or theoretically informed practice, is not a common organizing feature of most organizations, and case studies are one vehicle to begin to move in that direction. May (2006) summarizes several key benefits of organizational case studies such as this project. Successful case studies (a) provide an opportunity to explore the



real-world functioning of organizations in context, (b) stimulate reflection on others' actions, (c) provide exemplars of proper and improper organizational behaviors, (d) prompt discussions regarding alternative modes of action, (e) provide an opportunity to apply theoretical knowledge, and (f) serve as a cause for future action or research. Now that it is clear that important theoretical insights and practical concerns can be addressed from studying one organization, we need to better understand the organizational setting and participants.

### **Organizational Setting and Participants**

The Conflict Resolution Center (CRC) is a community-based center in the south that provides mediation services to a variety of clients from more than ten counties. The CRC was chosen for this study partly because of their commitment to improving social relations in their community by opening the lines of communication between disputing parties. Their mission is “to facilitate the peaceful resolution of conflicts,” and they are specifically committed to serving financially challenged individuals and organizations. This nonprofit organization improves its community through the communication-centered problem solving process of mediation.

### **Negotiating Access**

A first step in any research process involving organizations is negotiating access to the daily operations, especially when in-depth ethnographic methods will be used. It is necessary to build trust between the researcher and the organizational members from the beginning. Based on past personal experiences, part of my life philosophy includes actively trying to solve one's own conflicts rather than relying on others to solve them

for me. This personal philosophy led me to mediation training at the CRC in the fall of 2008 after a friend informed me of the process and benefits of mediation. After receiving 70 hours of mediation training at the CRC, I was able to establish relationships with the staff and become familiar with the organizational site. The CRC staff invites and encourages competent<sup>4</sup> individuals to volunteer at the center once they complete their training. Upon completion of the training in October 2008, I began co-mediating and met several of the other mediators. In addition, the October 2008 mediation class was the first time that in-house mediators and staff conducted the training. That is, the training I received was from several of the current mediators, staff members, and members of the board of directors, which further allowed me to cultivate relationships and begin to explore the ideas embodied in this study.

After conducting a few mediations and recognizing the rich communication processes embodied in mediation, I discussed some of my preliminary research ideas with the executive director of the CRC. He wanted to make sure that the board of directors agreed with the ideas behind the project, which from the CRC's perspective is to provide them with a list of mediation best practices, improve future mediation training sessions, and help create more interactive opportunities for mediators to share their knowledge with each other. The board of directors all agreed that the project would further the mission of the CRC, so they granted me permission to study the process of

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<sup>4</sup> The CRC executive director informally encourages everyone to mediate at the center but acknowledges that he "goes the extra mile" to persuade "promising" mediators to grow their skills at the center. He said that many people are not cut out to be mediators at a community center but that the skills are "still vital for everyday life."

mediation at the center. This permission provided me with access to conducting interviews with all of the active mediators, as well as gave me access to interviewing some of the attorneys and judges that work with the center.

To better familiarize myself with the mediators and introduce them to the project, the executive director allowed me to speak at one of the quarterly mediator roundtables in May 2009. This brief presentation provided the CRC staff, board of directors, and mediators with an overview of the theoretical and practical concerns of the project. This meeting also allowed the mediators to voice their concerns and ask questions, and it actually served as a springboard for future interview questions. Through these interactions, the executive director took a genuine interest in the goals of the project and, as is appropriate for engaged scholarship, became an active agent in constructing the goals with me. He served as a key informant and over the course of the study provided me with access to several other mediation venues: director's meetings for community-based mediation centers in the south, CRC board of directors' meetings, and planning sessions for the spring 2010 mediator training.

### **The Organizational Setting**

The CRC is a private, nonprofit corporation established in the southern United States in 1997. The original task of this organization was to provide swift, cheap, and peaceful resolution of conflicts for community members, serving over ten counties. The original mission statement of the organization was "to facilitate the peaceful resolution of conflicts by utilizing impartial third parties applying mediation and other alternative dispute resolution techniques within surrounding counties." In August 2009, the center

hired a nonprofit organizational consultant who suggested narrowing the mission statement. The current mission statement is “to facilitate the peaceful resolution of conflicts,” which the board of directors and the executive director felt captured the essence of mediation. When asked to describe the mission statement, one mediator said, “Mediators try to solve conflicts rapidly and peacefully, that’s it. No questions asked.” An important benefit of community-based mediation centers is that they cater to low-income individuals. Hiring a private mediator can cost between \$1500-3000 per day whereas the fees at the CRC are \$150 per side for a four-hour session; and if the individual has significant financial problems, the center adopts a sliding payment scale. Several of the attorneys and judges said the number one reason they use the CRC is “affordability.” An attorney who frequently uses the CRC mediation services said, “The CRC is the cheapest and closest place to address my clients’ needs out of court. The high quality mediators, and the center has got great ones, have saved my clients time and money from going through the courts.” Statements like this reveal how using mediation as an alternative to the court system has moved from a “cottage industry in the late 70s and 80s,” according to one alternative dispute resolution professional, “to a multimillion dollar profession today.”

Using mediation to address conflicts has become a fashionable, reliable, and credible form of alternative dispute resolution because it is an effective and empowering process. According to the National Association for Community Mediation (2006), there are more than 550 community mediation centers nationwide, over 19,500 active volunteer community mediators, more than 97,000 cases are annually referred to

mediation, and 45,000 of these cases are now mediated on an annual basis. Although there is no concrete data tracking how much mediation saves individuals or the states in court time and attorney fees, it is clear that people who resolve their issues in mediation rarely return to the courts. A judge who refers litigants to mediation at the CRC said, “Parties that get the chance to talk to one another and talk *about* their issues rarely end up in my court room again. Mediation allows people who need to be in court to get in and out faster. It saves the taxpayers’ money and frees up some space for a public service.” In order to go to court, the parties must be able to afford attorney’s fees, court costs, and have the time to take off of work, whereas mediation is much cheaper and faster. Thus, it provides an excellent opportunity for people without a large income to solve their conflicts.

Citizens from all socioeconomic classes use the CRC services. In 2008, the CRC saw 238 cases, and as of December 2009, the center had been used for more than 290 conflicts. According to the executive director, the CRC has seen a 10% annual growth of mediation cases since 2005. In early 2010, county judges ordered all family court cases to mediation prior to hearing temporary orders in our area. This is significant because the CRC has been inundated with mediations since this judicial decree, which demonstrates the legitimacy of mediation and creates another constraint on an already-cash-strapped nonprofit. The CRC does not like to turn away mediations, and thus, they will need to find mediators to cover the new influx of cases.

Most individuals who use the center to resolve their disputes are residents of two medium-large towns with populations totaling more than 150,000 people. The annual

income of CRC disputants ranges from less than \$10,000 to more than \$300,000, with the majority of individuals' household income being between \$30,000 and \$40,000. The towns are often collapsed into one entity, Smithton, during conversations and news broadcasts, and although the categorical distinction disappears, the material and racial differences between Ponderton and Altonville do not. The university-city where I reside, Ponderton, is primarily inhabited by middle-class to upper-middle-class Whites who are typically employed, well educated, drive nice vehicles, own their homes, and have access to health care. For instance, these individuals have disposable income to drive Hummer SUVs, eat out often, and pay for their children's college education. According to the U.S. Census Bureau (2010), nearly 60% of the residents in Ponderton hold Bachelor's degrees compared to only 26% of Altonville residents.

The educational, economic, and racial differences between the sister cities is very apparent. Altonville represents a more diverse ethnic population: 17% Black, 64% White, and 27% Hispanic. Ponderton is 80% White, 5% Black, and 10% Hispanic (U.S. Census Bureau, 2010). Many Altonville businesses cater to the Hispanic community and the community includes many Spanish-speaking-only areas. While driving down the main street one encounters many pawn shops, Cash-for-Car-Title shops, used car lots, and even a business that rents car rims to customers. Stereotypically, these businesses are associated with areas of lower socioeconomic status, and Ponderton has very few of these establishments. The school system in Ponderton is also widely regarded as superior to the Altonville system. Even though there are major demographic differences between

the two populations, these differences do not seem to have an effect on the process of mediation at the CRC. The majority of the CRC's clientele comes from Altonville.

The CRC is located in an old house where these two towns meet. The premises consist of six conference rooms, a kitchen, and two bathrooms on the first floor. Before entering the newly remodeled building, guests are exposed to stone-lined flower gardens with a variety of colorful flowers and plant life. After they walk through the large oak door, they run into a few well worn, comfortably-cushioned couches, a lounge chair, and a coffee table with magazines scattered about advertising local businesses and news. The case manager, Valerie, a very warm-hearted woman who you want to walk up and hug, competently runs the day-to-day operations: answering calls, filing paperwork, contacting disputants, attorneys, and the courts, assigning mediators to cases, and keeping the kitchen stocked with snacks and coffee.

Valerie's desk is positioned to the left of the front door and is buttressed with a line of copiers, faxes, and other communication technology. Valerie represents the front lines of the organization, because she is the first person the attorneys and disputants hear from – she greets guests, introduces them to the mediator, and directs them to the appropriate mediation space. Due to the limited number of rooms and the fact that the CRC is the only nonprofit mediation center in a 100+ mile radius, there are often multiple mediations taking place simultaneously. Space is a very important part of the mediation process because it provides security, privacy, and comfort for individuals who are often very distressed. Space is sometimes difficult to come by when multiple

mediations are taking place, so Valerie does her best to keep everyone comfortable<sup>5</sup>. Directly in front of Valerie's desk is a row of metal filing cabinets that serves as an artificial wall for Joe's (the executive director) desk. Joe is not at the CRC every day because he is part-time, however, he serves as the relief valve for other mediators. That is, when new mediators begin mediation, Joe makes sure he is around to answer questions or help with situations that might pop up. In addition, he fills in when mediators cancel at the last minute or perhaps cannot mediate because they know one of the disputants. Aside from these two duties, Joe is also charged with creating and allocating a budget, training mediators, growing the center, and sustaining the quality service that the organization currently provides. The 2008 fiscal year was the first time that the CRC earned a profit, which allowed the center to operate without relying on grants from local municipalities and counties. Joe was very happy with the profit because it demonstrated that "the community is beginning to use the center more often," one indication that the "services are worthwhile and effective." Joe recognized that this has provided legitimacy for the CRC and is working toward his goal of citizens' viewing "the CRC as a community *resource* rather than simply an *alternative* to the courts."

It is somewhat difficult for nonprofits to continually produce effective products or services because of their limited financial and human resources. The CRC is comprised of a 10-person board of directors, one part-time executive director, one full-time office and case manager, and approximately 30 active volunteer mediators. All of

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<sup>5</sup> A key part of effective mediation centers and offices is that they exude a comfortable, relaxing environment. Mediation should offer an informal alternative to the sterilized, intimidating, and cold environment of the courts.



these mediators have developed their own style, language, and resources, but they still approach the process of mediation in a similar manner. The mediation process is structured similarly in all regions of the United States: (a) introduce the participants to each other; (b) lay out the ground rules, roles, and expectations; (c) highlight the differences between mediation and other venues for solving conflicts; (d) discuss the benefits and challenges of mediation; (e) explain the turn-taking process and other structural tools (e.g., caucusing); (f) discuss privacy and confidentiality issues; and (g) secure the signatures of all parties on the release form (CRC, 2008, 2010b). Now that I have outlined the CRC organization, its staff, mediation procedures, and the surrounding cities, we need to understand the processes I used to collect, analyze, and interpret the data.

### **Data Collection and Management**

After being granted official access to the CRC, I determined that I would be using a variety of techniques to collect data. From an ethnographic perspective, I used a continuum of participants observations (Lindlof & Taylor, 2002; Spradley, 1980) ranging from complete participant to complete observer. For example, after completing the initial mediator training in the fall of 2008, I began co-mediating with experienced mediators to understand the process and acted as a complete observer. During these co-mediations, I did not say anything and simply watched how to properly structure the process. In my first mediation “I felt the stress and pressure of trying to save someone’s marriage...I felt responsible for others’ conflicts and I took these problems home with me after the mediation was over.” Because many new mediators have trouble “leaving

the issues in the room,” as one mediator put it, the co-mediations provide interaction opportunities to socialize new CRC members. Co-mediations are one of the few structural properties of the CRC that allow new mediators to ask questions and learn from a variety of mediation styles.

At other times—such as during my solo mediations—I took on the role of complete participant. These situations allowed me to engage the actual practice of mediation, and the only time available for reflection was after the conclusion of the process. I also enacted a variety of hybrid roles of participant-observer at the different meetings and conferences I attended. These situations enabled me to (a) take unobtrusive field notes (Spradley, 1980) that I later expanded, (b) engage in guided field conversations with mediators and attorneys, and (c) provide input when prompted during different meetings and interactions (e.g., asking me how to best discuss issues of *listening* during training and how to keep people’s attention during presentations). This wide variety of roles had several advantages. First, I was an insider-outsider because I knew the vocabulary and understood the process of mediation which increased my credibility and trust with individuals. Once trust was established, people felt more comfortable to talk about their mediation practices even though I was a researcher. Second, people were aware of my researcher role, because the CRC gave me several opportunities to introduce our project goals to the mediators and attorneys. People were not alarmed at the fact that I was studying their actions and language. Next, I will more thoroughly describe the participant observation experiences, qualitative interview

participants and structure, and organizational documents which serve as the foundation of my analysis.

### **Data Sources and Procedures**

*Participant Observations.* Over the course of 20 months, I spent over 330 hours in the field doing various forms of participant observations. I have served as a co-mediator eight times in which I observed the primary mediator conduct the process. I have also conducted 23 solo mediations where I was in charge of the entire process. I participated in a CRC board of directors meeting in which they brought in a nonprofit organizational consultant to help them redefine the board's role. I attended a state-wide mediation conference where I took field notes and participated in 15 ethnographic interviews (i.e., guided conversations) with mediators, attorneys, judges, and other ADR professionals. I participated in a community-based mediation center director's meeting, where 12 of the 18 community-based mediation center directors were present. I participated in three planning sessions for mediation training where we brainstormed ways to improve the spring 2010 training, which I then participated in as an instructor. In addition to these specific events, I spent many hours informally speaking with mediators, attorneys, and the CRC staff at the Smithton location. Finally, prior to all of these observations, I graduated from a 70-hour training session to become certified as an official mediator.

These observations produced 231 single spaced pages of extended notes. During most of my participant observations, I was able to take brief handwritten field notes, which I expanded within 24 hours to keep the event fresh in my mind. One of my goals

was to be as unobtrusive as possible, so people would remain comfortable and to stay focused on their task. For instance, when I participated as a co-mediator, taking notes is part of the process and did not make anyone feel uncomfortable or change their normal behaviors. Spradley (1980) suggests focusing on a person, place, or activity during participant observations, and because the mediations occur in such tight quarters, it was easy to focus on people and activities simultaneously. However, when I was attending conferences or acting as a mediation trainer I had to be more selective about my note taking strategies. It would have been very awkward to start taking notes in the middle of informal conversations or during a training lecture. Instead, I would talk about issues with different people or observe their interactions with others and then go jot a few notes down in another location, out of their immediate line of sight. During the several meetings I attended, note taking was quite acceptable and thus did not pose a problem, but the goal was to (re)present the events that I saw as descriptively as possible.

Participant observations are useless without detailed and descriptive expanded notes. The notes must be as detailed as possible, and they often include many events and descriptions that will not end up in the final report. However, a researcher cannot know this until the analysis begins, which is why it is important to capture as many things as possible that are going on in the field. My extended notes included both thick and thin descriptions (Denzin, 2001; Geertz, 1973), because each of these types of descriptions serves different purposes. Denzin says that thin descriptions report facts and gloss over meaningful accounts or experiences; however, I posit that these descriptions are useful when trying to capture dates, numbers, or other types of specific material. Of course it is

necessary to regularly go beyond thin descriptions to holistically provide rich, meaningful, and nuanced accounts of events and actions. “Thin descriptions use experience-distant concepts. Thick descriptions employ experience-near concepts” (Denzin, 2001, p. 103). Effective descriptions use the participant’s language and try to account for their body language, outward appearance, and exhibited attitudes, as well as describe the wider contextual embeddedness, whereas thin descriptions translate these concepts into social scientific jargon or omit them altogether. My descriptions tried to account for relational thickness, situational thickness, interactional thickness, and when possible, historical thickness (Denzin, 2001).

*Interviews.* Two different types of interviews were used for this study. I conducted 26 in-depth, qualitative interviews that lasted approximately 45 minutes each. In addition, I also conducted 15 ethnographic interviews (Lindlof & Taylor, 2002) where I casually chatted with mediators and attorneys about their mediation practices and the field of mediation. These shorter interviews resemble guided conversations (Spradley, 1980) in the sense that the conversation is naturally evolving but is also anchored around a few key topical questions. These two interview structures were relevant and necessary for several reasons. First, the in-depth interviews allowed me to comprehensively understand the CRC’s mediation practices, the CRC’s principles behind its organizing choices, and the individual practices of different mediators. They also gave me a chance to debrief mediators with whom I had co-mediated and allowed me to ask questions regarding their training. The in-depth interviews shed light on the organizing practices of individuals at the CRC. The second type of interview allowed me to better understand

the field of mediation by highlighting the institutional mediation discourse. By asking a few directed questions, participants were able to discuss the key principles behind mediation training and practice.

The ethnographic interviews lasted between three and 20 minutes but provided valuable information regarding the current state of the mediation field. A typical interview is as follows:

Zach: Those conferences are great, aren't they?

Respondent: Yes they are. I love meeting other mediators.

Zach: My name is Zach. I mediate out of Smithton. What about you?

Respondent: I am located out of Kansas City.

Zach: What was the best thing you learned that you've been able to use in your mediations?

Respondent: I enjoyed learning how to read nonverbals and body language. We didn't get that during our training and I found it helpful.

This general questioning and probing pattern would continue, and if an opening occurred in the conversation, I would eventually work in a few other key questions: what is the most important thing to remember during a mediation; how do you deal with difficult disputants or attorneys; what is your most successful/difficult mediation of all time and why; in what ways do you keep attorneys involved but not allow them to dominate? During these brief and informal questions, most people are very willing to share their experiences (See Appendix A for the interview guides). Throughout this process, I was continually revealing information about myself and my project. I had a field story

(Spradley, 1980) prepared that was very succinct. “In addition to conducting volunteer mediations in Smithton, I am working on my PhD in communication. I study how organizations and individuals manage conflict, and I am trying to better understand why mediation is such a successful alternative to the courts. I have been interviewing and talking with knowledgeable experts, such as yourself, to learn more about the field.” Participants responded very positively to this script, especially once they understood I was positioning them as the expert! Overall, the guided conversations were very enlightening because individuals were excited to share their knowledge. Conferences, meetings, and informal training sessions are hotbeds of knowledge creation and exchange and exactly the sort of interactions communities of practice must foster.

The in-depth interviews also produced interesting data but many of them were geared specifically to the CRC. In total, I interviewed 26 individuals. Fully transcribed interviews totaled 891 double-spaced pages of interview text, and although the average interview length was 45 minutes, the range of length was from 30 minutes to 130 minutes. Participants included four local county judges who order disputants to mediation, four local attorneys who often represent clients at the CRC, the executive director of the CRC and three executive directors of other community mediation centers, the case manager at the CRC, 11 CRC mediators and trainers, an attorney from Illinois, and a professional in the field of corporate alternative dispute resolution. Five of the interviews were conducted over the phone and the rest were face-to-face. The 26 individuals were very willing to share information with me about their personal mediation practices, their opinions about the field of mediation as a whole, and their

suggestions for improving the practice of mediation. I used a semi-structured, inverted funnel interview format (Frey, Botan, & Kreps, 2000; Lindlof & Taylor, 2002) to ensure that I asked the participants the same questions to produce some amount of consistency and to begin with straightforward questions before shifting to the more detailed ones. This method built rapport and trust because I would add relevant details about my experiences.

I asked a variety of questions to understand individual mediation practices, the interactions between the mediators, and the organizing practices of the CRC. For instance, I began the interview by asking how individuals got involved with mediation and asking about their current and former careers. Participants often connected their discovery of mediation to life experiences such as careers, educational opportunities, or hobbies. People are very comfortable discussing concrete issues such as their career, allowing them to become comfortable at the beginning of the interviews. After the closed questions, I asked the participants a variety of other question types including descriptive, elaborative, structural, comparative, rank-order, hypothetical, and reflective (Spradley, 1979). A descriptive question I used was, "Describe the ideas that made the most sense to you from your mediation training," which I typically followed with an elaboration question that picked up on one of their key words or ideas. I consciously tried to live in their language, use their terms, and refrain from paraphrasing things into my own thoughts. Structural questions included, "What rules do you follow when mediating and where did you learn them," and "what resources do you use when mediating?" These questions allowed individuals to extrapolate on the ways that they



define, manage, and interact during their practice. Comparative questions typically asked participants to contrast two different ideas, such as “Tell me about how you handle problematic attorneys versus problematic disputants.” Comparative questions illuminate interesting nuances between two related ideas, events, or interactions. Rank-order questions encouraged participants to rank their mediation experiences at the CRC and suggest ways to improve the center’s practices. Hypothetical questions took the form of “if-then” or “imagine that” statements; they encouraged people to suggest ways for moving their mediation practice toward some ideal form. The hypothetical questions are similar to the design phase of appreciate inquiry interviewing (AIC, 2010), because these questions encourage individuals to think about the positive aspects of mediation and offer suggestions for how to reach this ideal state. Finally, I asked reflective questions whose purpose was to engage in-the-moment sensemaking about the interview interaction. For instance, I would say, “What did you like most/least about the interview,” or “You seemed really excited about X topic, tell my why.”

In addition to asking different types of questions, I also grouped the interview questions into five clusters: (a) communities of practice, (b) the mediation process, (c) multiple discourses, (d) power, and (e) conclusion. The entire interview protocol is presented in Appendix A. This structure made the coding process more efficient because I knew where particular responses would be located relative to the audio recording and other interviews. I was able to track my codes more efficiently throughout the large amount of data. The clusters also addressed major components of my research questions and formed the structure for my analysis. Within each cluster, participants were able to

discuss the benefits and challenges associated with each topic. For instance, under the communities of practice cluster, participants discussed how they *do* or how they *would* create more meaningful interactions between mediators. In short, the clusters provided a systematic way to account for the many different topics being addressed and allowed the participants to discuss related topics and ideas in a specific order.

*Organizational Documents.* I had access to over 300 pages of organizational documents that included training materials from my 70 hours of mediation training, historical documents related to the CRC, annual CRC reports, updated training materials, consulting documents provided by the nonprofit consultant, and a variety of newsletters, websites, and handouts from various professional mediation organizations. Analysis of these documents provided not only triangulation with my participant observations and interviews, but also directly captured the institutional discourse of the mediation field. Many of the mediation training materials are used by other community mediation centers across the U.S. and internationally (Mediate, 2010), and the professional mediation organization newsletters are circulated both state- and nation-wide. The analysis of these documents provides a clear connection between the institutional, large-D discourse of mediation—as Foucault (1972, 1980) explains how we cannot escape discursive knowledge structures that frame the way we view and interact with society—with the micro-interactions, little-d discourse employed by individual mediators practicing in community mediation centers. These documents helped elucidate the relationship between structure and action (Giddens, 1984), or how individual mediators use, apply, and reshape the structures of mediation and (re)produce the rules and resources that

guide the field. With such a large amount of emergent data, we must now look at how I categorized and organized these materials.

### **Data Management**

With such a large data set, I had to ensure that I would be able to track the wide variety of accounts that emerged, so I typed up all of my notes into electronic files. I kept an electronic journal that included my assumptions, intuitions, biases, observations, and expanded notes to account for how my thought process developed over time. I hired a professional transcriptionist to transcribe the 26 in-depth interviews verbatim, which included pauses, laughter, misspoken words, emphasized words, and space fillers to recreate the context and meanings invoked by the participants. This style of transcription was appropriate for several reasons. First, in order to create useable knowledge (Petronio, 1999, 2002) for the CRC, the findings must be legible and intelligible.

Filling the analysis section with turn-taking cues, arrows, and adjacency-pair-signage is difficult for non-experts to comprehend; this detailed Jeffersonian transcription style of conversational analysis was not appropriate for this project. Second, I was not looking for underlying structures such as cognitions or attitudes that anchor people's beliefs and are revealed through conversational analysis. The discursive psychological approach advocated in this study is interested in how the discourse was used and functions in daily use, and this approach will be explained in more detail in the following section. Third, Jeffersonian transcription is very time consuming and expensive (Lindlof & Taylor, 2002; Potter & Wetherell, 1987). To ensure that the transcriptions were accurate, I re-listened to all of the interviews while coding the

transcripts, and they were matched up perfectly. Atlas.ti, a qualitative data management software program that helps researchers keep track of, code, and categorize textual data, was used to manage the large amount of files. This program does *not* code the data for you but provides a way to manage, categorize, and sort the data. At its core, Atlas.ti is a technologically advanced data filing system. With the data now sorted and categorized, it is necessary to discuss the analytical and interpretive methods used in this project.

### **Data Analysis and Interpretation**

The data analysis method used in this dissertation developed out of the field of social psychology and supports a social constructionist approach to language that is similar to the theoretical approach inherent in ethnographic studies. Discursive psychology was developed to explain the constructive function of language (Edwards & Potter, 1992; Potter & Wetherell, 1987). Discursive psychology represents a theory and method that overcomes the myth of “talk vs. action” by suggesting that talking is active, because discourse creates and transforms meanings that have consequences for how people interact in the world.

Discursive psychology is an interesting analytical tool because it represents an *innovative* and *traditional* approach to discourse analysis within the field of communication. It is innovative in the sense that it reframes the notion of discourse into the more explanatory idea of interpretative repertoires (Potter & Wetherell, 1987), and it is traditional because our discipline has already acknowledged that communication is *the* primary social process used to create reality, not simply a means for accomplishing tasks. In addition, the merits of a social constructionist approach to discourse are well-

documented in the field of communication (Allen, 2005; Galanes & Leeds-Hurwitz, 2009; Pearce, 1995). This section will unpack the discursive psychological approach to discourse analysis by first discussing the role of the analyst and then articulating the appropriate steps used to understand individuals' accounts of their actions.

### **Role of the Analyst**

Discourse analysts are the research tools in their projects. Analyses, interpretations, and conclusions result from the analysts' iterative review of the data. The difference between a discursive psychological approach to discourse and a traditional social psychological approach is great. In discursive psychology (DP), the analyst is not trying to discover some "truth" that lies behind, beyond, or underneath the spoken language but rather the analyst is trying to understand the functions, contradictions, and ironies that emerge as part of language-in-use. The categories individuals use for understanding and engaging the world are not universal but are culturally and historically situated. With contextual constraints such as these, no two discursive analyses of the same data would be identical, and they might not even be similar. Discourse analyses do not claim to be "the only possible representation of the world, but rather, just one version which is part of a discursive struggle" to secure meanings (Phillips & Jorgensen, 2004, p. 116). In short, there is no objective criterion of knowledge or truth that the researcher is producing but rather a co-constructed series of accounts created between the researcher and the participants.

The *reflexive* nature of DP explains how accounts are co-constructed. First, researchers typically create and frame the interview questions and research questions to

which the participants respond (Sheep, 2006), and because questions are fateful and people rely on their discursive resources to answer them, different people will respond in different ways. Second, effective discourse analysts reflect upon and suspend the beliefs that they take-for-granted in their data collection process. Discourse serves as the object which is the topic of analysis and is also an analytic resource. Therefore, analysts should take care to explicate their own discursive resources, theoretical sensitivities (Strauss & Corbin, 1998), and assumptions that emerge during the research process.

While the reflexive and fluid nature of discursive psychological research might be difficult to operationalize—because analysts engage the process differently—it is necessary to discuss the steps I used to analyze and understand the emergent data. First a word of caution is necessary. There is no overarching method to discourse analysis as there is in content analysis or experimental methods (Potter & Wetherell, 1987), but the approach is adapted to different situations much like ethnography. In DP, the research report is the data itself, the actual topic, and not simply a resource from which the topic is rebuilt – the report illustrates the detailed interpretation of the texts. Potter and Wetherell (1987) suggest that “the stages of discursive psychology are more of a loose conceptual scheme rather than an unyielding temporal narrative” (p. 174). The following section forms the conceptual scheme from which I analyzed the data.

### **The Discursive Psychological Method**

Potter and Wetherell’s (1987) original articulation of the discursive psychological method involved ten overlapping steps. Many of their ideas were covered in Chapter I, so I will highlight the vital steps used to analyze and understand the data.

The first step in the DP method is to create research questions, which have been introduced and explained in Chapter I. The second step is to choose an appropriate sample size. With the unit of analysis of DP research being language-in-use rather than the people using the language (Sheep, 2006), and because many linguistic patterns will emerge from a few participants, “small samples or a few interviews are generally quite adequate for investigating an interesting and practically important range of phenomena” (Potter & Wetherell, 1987, p. 161). A large number of interviews might not add to the depth of the study, as many studies focus on a single text, but the sample size in this study was a practical number that lead to a variety of interesting linguistic patterns.

One of the goals of DP research is to highlight the variance between different accounts, and the sample size of 41 interviews provided a large amount of variance. I selected interview samples that represent a continuum of positions rather than deselecting interviews that do not fit, or are not consistent, with emerging patterns. The specific sample selections emerged from in-depth interviews, ethnographic interviews, textually expanded participant observations, and organizational documents. The third step of the discursive psychological method is the production of naturally occurring materials. These materials came from website documents, ethnographic interviews conducted at conferences and training sessions, materials distributed at professional gatherings, and annual reports created by the CRC (Edwards & Potter, 1992; Phillips & Jorgensen, 2004; Potter & Wetherell, 1987). In regard to the ethnographic interviews, Potter and Wetherell found that mundane conversations are just as important as

milestone speeches or events, which is why the ethnographic interviews were a useful, rich source of information.

The key criterion for this type of data is that it is externally produced and the researcher has no influence over it (Phillips & Jorgensen, 2004). More important, many of these materials have been distributed among the interview participants, and therefore, they serve as one source of the big-D Discourses (Sheep, 2006) that individuals use to position their accounts of their individual mediation practices. These documents form part of the institutional discourse from which actors position themselves within the field of mediation by appropriating certain terms that resonate with their individual experiences. In short, these materials form part of the interpretive repertoires that actors draw on to explain their understanding of mediation.

The next step in the DP method is to produce materials through in-depth, qualitative interviews. Interestingly, although I may be viewed as holding power over the interviewee in terms of my social knowledge, this was not the case. My academic knowledge does not transfer to the interview situation because I am positioning the interviewee as the expert, as the powerful subject from whom I am trying to learn. I was viewed as a bit naive in terms of mediation and legal knowledge, which was both a strategic choice on my part and a natural occurrence of the interviews. I tried to minimize my academic jargon by consciously translating epistemologically dense terms and ideas into more coherent, practical ideas. To transcribe the 26 in-depth interviews, I hired a professional transcriptionist. This decision enabled me to “analyze the interview as social interaction[s]” (Phillips & Jorgensen, 2004, p. 124) that naturally unfolded.



I chose not to use the Jeffersonian transcription technique because the reader can still understand the flow of discourse that was created without such a detailed analytical system. I was more interested in preserving the functions of language use rather than explicating the turn-taking sequences, adjacency pairs, and overlaps of talk, which are commonplace in conversational analyses. Similar to the research exemplars used in Wetherell and Potter's (1992) study of racism, this analysis investigated the variances in patterns invoked from multiple sources of data without relying on intricate conversational analytic notations. I argue that detailed notation systems do make the conversational flow more transparent for experts who are familiar with the notation system; however, this system would obfuscate the conversational flow for those inexperienced with such systems, such as the CRC members. The research report is just as much a part of the social construction process as the interviews themselves because the report needs to serve as a resource for the CRC for years to come. Pearce (1995) says that social constructionists are "least at home in the abstract world of atemporal, decontextualized propositions and most at home in the always local, historical, specific, unfinished world of actions" (p. 108). DP must clearly illustrate how people discursively construct their "unfinished world of actions," and my transcription method accomplished this goal.

Coding the transcribed interviews and materials is the next step of the DP method. Coding data for a DP approach is different than a grounded theory coding scheme in that the goal is not to inductively construct a theory from which to prove or disprove hypotheses (Sheep, 2006). The goal of DP coding is to collect instances

together for examination (Potter & Wetherell, 1987). The analyst is not looking for consistent themes or categories that emerge, but rather this step assembles similar data together for further analysis. Coding is simply a pragmatic function used to organize the data for detailed analyses of account variations, functions, and constructions (See Appendix B for the revised coding scheme). The codes that I created were related to the research questions and aimed to group together similar ideas for ease of future analysis. DP coding is a very preliminary step that is more as a tool of *organization*, differentiating it from its *analytic* use in grounded theory or conversation analysis. With the goal of understanding how participants rely on interpretive repertoires to construct categories, it is not as important to demonstrate the thematic relationships between the categories that emerge (my complete coding guide is presented in Appendix B). My coding scheme was merely a way to organize the categories the participants used, because “people draw upon knowledge of the organization of categories as a resource for producing economical and intelligible conversation” (Potter, & Wetherell, 1987, p. 129). Coding provides the first plank in the bridge between analysis and interpretation of the data.

The most significant part of the DP method is the actual analysis that occurs iteratively throughout the research process. Analysis is always directed toward answering the research questions. Strauss and Corbin (1998) said that “analysis is the interplay between researchers and data” (p. 13), and this interplay is contextually dependent on the type of materials being analyzed. In this case, I was interested in the interpretive repertoires participants used to account for (a) their mediation practices, (b)

the organizational structure of the CRC, (c) how the CRC assembles competing repertoires into a coherent practice, and (d) how the CRC manages the intersection of legal and mediation repertoires. The analysis that follows in Chapter III strives to preserve and demonstrate the contexts invoked in interviews and documented materials, as well as maintain the variances, inconsistencies, contradictions, ironies, and similarities between the participants' accounts. Within discursive psychology, variations in responses are as important as consistencies (Potter & Wetherell, 1987). Including the variances between different participants' responses and within single participants' responses may create the perception of invalid or unrepresentative results. This view of validity is incorrect within a DP approach.

To ensure that the analyses are valid, this study adheres to criteria discussed by Potter and Wetherell, in addition to other qualitative researchers (see the final section within this chapter for a detailed discussion of qualitative criteria for quality research). First, DP methods must exhibit *coherence*. Although analysts will present a wide variety of accounts that often have a large amount of variance, it must be clear how all of the discourse fits together. Second, researchers must protect the *participants' orientation*. DP analysts are interested in how people actually use language rather than dictionary definitions of words or abstract meanings, and thus, the goal is to capture the meanings and use of words as they are being spoken. Third, Potter and Wetherell believe that results must be *fruitful* by creating more interesting and important questions, novel explanations of extraordinary discursive phenomena, and be able to make sense of new kinds of discourse.

Another way to account for the validity of the research is the final report, in this case it is the dissertation. The final report should track the researcher's findings and conclusions from start to finish. An effective discursive analysis transparently presents the movement from data to analysis, and from analysis to interpretations and conclusions. This is why the analysis chapter is much longer and more detailed than the rest of the dissertation – the discourse is both the topic under investigation and the tool of analysis. Finally, to fulfill the objectives of engaged scholarship, the results of this project must be thoroughly applied. This is not something that can be left until the end of the project but should rather be part of the research process. To apply the findings, I have engaged in learning conversations with the CRC throughout the process, have served as a trainer and communication instructor, created materials to improve future training sessions, and presented my findings at the May 22, 2010 quarterly mediation roundtable.

In summary, Potter and Wetherell's (1987) approach to discursive psychology focuses on the active capabilities of language. The goal is to understand how people create accounts for their actions using language and to recognize the implications of different types of accounts. To create their accounts, people use interpretive repertoires, which are another form of discourse anchored around a core set of ideas, metaphors, jargon, or habitual forms of argument. Potter and Wetherell (1987) said that "the principal tenet of discourse analysis is that function involves construction of versions, and is demonstrated by language variation" (p. 33). The focus is on the discourse itself, how it is organized, and what it is doing. Specifically, this project tried to connect the

local discourse enacted in mediations at the CRC to the institutional discourse of the field of mediation. Through this process a number of interpretive repertoires emerged that individual mediators and the CRC used to manage competing forms of discourse.

### **Researcher Positionality**

Initiating the study required a review of relevant literature that allowed me to develop what Strauss and Corbin (1998) call theoretical sensitivity. The literature helped me identify the emergence of certain phenomena in the field. This study was systematic, rigorous, and trustworthy and is demonstrated through a discussion of Baxter and Babbie's (2004) definitions of the criteria for valuable qualitative data. Baxter and Babbie extended Lincoln and Guba's (1985) four original criteria: credibility, confirmability, dependability, and transferability. Baxter and Babbie posit that *credibility* "basically asks whether the study's conclusions 'ring true' for the people studied" (p. 298). This question ensures that my conclusions are based on my participants' understandings of reality and reinforces the assumptions of social constructionist, ethnographic, and engaged scholarship. This study was *dependable* because it used external checks to verify that my interpretation of participants' meanings accurately captured what they meant. These member checks made sure that my research was trackable, because they supply the researcher with one way to guarantee that the participants' perceptions of events are being reported rather than the researcher's perceptions (Strauss & Corbin, 1998). An audit trail emerged as the result of my data collection, management, and analysis methods that allows the audience to track the changes in my thought process over time.

The materials I constructed to validate my conclusions represent the *confirmability* of this study. Confirmable results ensure that the research process is transparent by illustrating the researcher's "logic in moving from particular data to the conclusions drawn from that data are systematic, coherent, and explicit" (Baxter & Babbie, 2004, p. 298). Although the distinction between the terms dependability and confirmability is confusing, the former tracks the researcher's "flow of understanding to make sure changes across time make sense" (Baxter & Babbie, 2004, p. 298), whereas the latter substantiates that a researcher's conclusions lead back to the data and are well-reasoned. My prolonged engagement in the field, which included over 330 hours over a span of 20 months, gave me the opportunity to identify and verify all of the patterns that emerged from my data.

In addition to the extensive amount of time I spent in the field, I also read over 300 pages of organizational documents related to the CRC, different forms of mediation such as corporate and peer, and the field of alternative dispute resolution in general. These documents included: organizational pamphlets, annual reports, client and attorney demographic information, CRC newsletters, professional mediation association newsletters, and CRC training documents. Reviewing this cornucopia of documentation increased the *transferability* of the project because it helped me create thick descriptions (Geertz, 1973) that invite the audience to "judge for themselves whether the analysis is relevant to them" (Baxter & Babbie, 2004, p. 298). People must decide for themselves whether or not my findings are transferable, because I do not suggest that my findings are generalizable; this style of research gives the power to the audience. One way I tried

to provide my audience with power is by building in “learning conversations” with the executive director of the CRC to allow him to listen to, critique, and offer suggestions about the analysis. I regularly bounced ideas off him and tried to be very cognizant of co-constructing the research process with him rather than solely presenting myself as an omniscient expert. This finalized document will be presented to the organization and hopefully used as a resource in the future, and in addition to the final research report, I created a Power Point presentation summarizing the “best and worst” mediation practices I encountered and also created several resources to improve training procedures including role plays and slideshows.

Additionally, to ensure that the research was of high quality, I triangulated my methods in two ways (Lincoln & Guba, 1985). First, I spoke with a variety of participants to understand mediation from as many perspectives as possible. I interviewed the CRC staff, CRC mediators, attorneys that represent clients at the CRC, judges who send clients to the CRC, attorneys affiliated with mediation in other states, and nationally recognized mediators. These different sources allowed me to better understand the process of mediation at the CRC and in other states and begins to illuminate the relationship between the local mediation discourse and the institutional mediation discourse. Further, the different accounts from interviews and guided conversations allowed me to examine the variability between them and determine which interpretive repertoires were more representative of the entire field of mediation and which were more connected to the CRC. Second, I used multiple methods to collect the data. Interviews, participant observations and expanded field notes, and organizational

documents were all analyzed and compared with one another in the verification of the final repertoires.

Because ethnographic techniques such as participant observations and guided conversations entail becoming very familiar with a cultural scene and its members, the ethnographer often develops very personal relationships with the participants. These relationships can lead to ethical dilemmas in the field, especially near the close of a study. Darling-Wolf (2003) suggests that all ethnographies include exploitation, social inequalities, and betrayal, which are manifested in the knowledge/power we hold over our participants. We must be careful not to abuse our power, and to do this, I tried to build in opportunities to translate any of my findings that did not make sense to my participants. Darling-Wolf is saying that when researchers pop-in to study a culture, get what they need, and pop-out of the participant's lives, this creates a one-sided relationship and is an abuse of human subjects. She feels that more researchers should try to create balanced relationships with participants where they try to close the knowledge gap between them and offer social services that could potentially be useful within their cultural setting. Participants feel betrayed when they realize that they were treated as objects of knowledge, and once that knowledge was extracted, they were tossed aside. This approach creates the perception that the researcher's only goals were to increase their personal understanding of the social world and the trajectory of their career.

Being reflective about one's positionality (i.e., educational level, race, age, sex) can alleviate some of the power imbalances, can contribute to how the researcher is



viewed by the community, and can determine the type of access that one will get. Because I am a white male, I will probably have access to cultural scenes that a person of color might not be able to study, and vice versa. Ethnographers need to be aware of how others are receiving and perceiving their presence. Communicating with the participants frequently about what is going on in the study is also essential. This increased contact will also provide richer insight into how they create and shape their cultural practices, as well as develop rapport and trust. However, these interactions must be authentic and not motivated by purely strategic motives. Darling-Wolf (2003) reminds scholars to always put people first and theory-building second in ethnographic endeavors.

Finally, Bochner and Ellis (1996) remind ethnographers to empathize with the participants and try to see the world from their view. If we want our academic audience to have the ability to be a competent communicator in the culture in which we are writing about, we need to be competent communicators while interacting with participants in the field, remembering that we are not dealing with abstract theoretical phenomena but people's embodied lives.

CHAPTER III  
ORGANIZING INTERPRETIVE REPERTOIRES AND THEIR POWER  
IMPLICATIONS

*“As soon as you hire a lawyer you get polarized. Mediation dissolves that mentality.”*

CRC volunteer mediator describing a consequence of the legal system

*“I love mediation, I love talking about it. A lot of people, especially attorneys, think it is easy to be a mediator. It is draining!”*

Private attorney mediator describing her decision to only mediate

*“It’s just people skills. That’s it. I mean, you can have very intellectual mediators, or people with all sorts of degrees, but if they can’t talk to people, they’re not going to be able to resolve the case.”*

Family law attorney familiar describing necessary mediation skills

As the above quotes suggest, there are several different sets of skills needed for successful mediations. Mediators must be able to deal with attorneys, must be comfortable talking with highly stressed individuals, and must apply intellectual knowledge to resolve cases. In this chapter, I answer my three research questions by first explicating the four interpretive repertoires that the CRC mediators used. They are: Cultural Competence, Volunteer Pride, Parenting Norms, and Business Professional(ism). In using a discursive psychological approach to the data, I illustrate

instances of each of the repertoires that reveal the different functions of the discourse. Next, I demonstrate how the CRC members shared their repertoires by highlighting connections to the community of practice literature. The final section discusses the power implications involved in community mediation, focusing on the relationship between attorneys and mediators and the tensions that emerge as a result of their tenuous relationship.

### **Emergent Interpretive Repertoires**

The following repertoires emerged as a result of the conversations, co-mediations, and interviews that I conducted, as well as from observations of meetings that I attended. Data are drawn from the interview transcripts, expanded field notes, and analysis of organizational documents. As I explain the consistent and varied use of each repertoire, I supply contextual cues to help make sense of ideas and prevent confusion. Each repertoire analysis highlights key metaphors, jargon, and habitual forms of argumentation that frame the repertoire.

### **Cultural Competence**

You know, there - there are a lot of different kind of tools that I learned along the way from other mediators that have become very useful to me. I'll give you an example. Now, I at one point had a culture clash in a mediation where really the - it almost seemed like the disputants were speaking two different languages because I think it was a huge culture difference of what was going on. And because I had been exposed to the culture diversity and how to try to bridge the culture gap, I was able to utilize some tools in that particular mediation that I

think got them closer - well, more working from the same page, cause I think that a culture difference in that specific mediation really caused them to not see eye to eye and because I was exposed to that dialogue about, well, different cultures have different - you know, sometimes people have different needs based on their cultural differences -- I was able to utilize that.

Leslie, Director of a CRC discussing one of her mediation tools

The cultural clash that Leslie was referring to involved a neighborhood association president – a Caucasian male – and a female Vietnamese neighborhood resident. The president had received several complaints that the woman ripped up bushes on communal property and planted exotic Asian flowers in their place. He was newly elected to the position, and the complaints were coming from longtime residents of the neighborhood, whereas the Vietnamese woman and her husband were newcomers to the neighborhood. The woman and her husband had recently been awarded a city-wide gardening award, so she thought she was beautifying the community by sharing her green thumb skills. However, the other residents did not like the Asian landscape design, so the president had the floral arrangement ripped out and charged the woman for the landscaping labor and materials.

Although it is common knowledge to communication scholars that cultural norms, beliefs, and values provide a language from which to talk about and make sense of the world, other professionals do not always understand this. What is refreshing about Leslie's comment is that she understands how culture can both create and exacerbate conflict. Leslie views cultural knowledge from a utilitarian standpoint, as a tool. She

used the tool to bridge a cultural gap that resulted from an internalized view of the world. In the end, Leslie was able to reframe the situation and help both parties see that they each wanted what was best for the neighborhood. Leslie said that because the woman came from a “collectivist-oriented culture” and the man was from the “individualist United States,” they “talked past one another.”

Even disputants correlate language differences (e.g., English and Japanese) with deeper cultural differences, and language differences are also a key element of this repertoire. Many mediators talk about language barriers as impediments to the mediation process. Leslie said the disputants were speaking “two different languages,” and even though they were both speaking English, the ethnic and societal values prevented them from seeing eye to eye. Through Leslie’s recognition and focus on cultural differences, they eventually reached an agreement and started to “work from the same page.”

To clarify my use of culture I borrow from Pettrigrew’s (1979) definition of culture, which is a partially shared understanding of norms, values, beliefs, and attitudes that serve to define some group’s understanding of the world. Within organizations, culture includes a systemic view of the past, present, and future all linked together through various cultural expressions including stories, myths, rituals, ideology, and symbols (Martin, 2002). Eisenberg and Riley (2001) said that a communicative approach to culture must investigate mundane interactions and treat culture as dynamic performances that can evolve over time, as the cultural artifacts shift over time. Another example will shed light on the cultural competence repertoire.

Heidi is a volunteer mediator at the CRC who also works at the local courthouse. During our interview, she recalled a mediation in which two sets of neighbors continually called the police on one another. Each of the mothers kept blaming the actions on the other parent's children because they were scared that gang violence would erupt. When her mediation began, the room was filled with Heidi, the two mothers, their combined five children, and a police officer. To complicate things, Heidi had to conduct the mediation "bilingually because some participants did not speak English, which was a major cause of their problems." She said she was nervous that this would be a "hostile and complex" discussion, but she was oddly relieved when it was not. She said, "The mothers were probably the worst ones. Yeah, as far as mouthing off, 'It's your kids, my kids.'" Heidi said the mothers were anxious about the consequences of their children being involved in gangs, which was only amplified by the language barrier. They needed someone to facilitate a conversation that put the parties on equal footing. In short, Heidi's discussion of the importance of language suggests that agreements will not arise when people speak different languages or speak from different cultural assumptions.

Recognizing that language, ethnicity, and age inform our experiences in the world is the first step to using the culturally competent repertoire, but the mediator must address these issues in the actual mediation as well. The following situation emerged from one of the co-mediations I conducted with Susan, an experienced CRC volunteer, and demonstrates how she used the culturally competent repertoire<sup>6</sup> during the

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<sup>6</sup> To expedite analysis and assist the reader in following the repertoires, I separated them into different categories, when they are not always mutually exclusive. Participants transitioned from one repertoire to

mediation. The dispute involved two unmarried adults under the age of 21 who were arguing over custody and visitation rights regarding their child. These two adults had dated for a year and prior to that were best friends for several years. During their friendship and courtship they used drugs together. After the child was born, however, the father decided he did not want to be romantically attached to the young woman anymore, but she wanted to stay together and get married. He did want to be involved in his child's life and he was willing to be involved with the mother on a platonic basis, but nothing more. This did not please mom. In addition to these individuals, each of their fathers was present for the mediation.

Because the parties felt they could not talk to each other civilly, this mediation was conducted in separate rooms and we used shuttle diplomacy to carry messages back and forth. After listening to each side's issues, Susan began to ask some interesting questions of the disputants, such as, "Who is paying for the child's clothing and food; where do you work and who takes care of the child when you are at work; and do you want what is best for your child, and what is that?" After talking to the young adults, she asked permission to ask the fathers a few questions. Through a similar series of inquiries, it became clear that the fathers were in control of this process – they were paying to raise and care for the child. Susan realized this and started a dialogue between the fathers which ended in a final agreement between the parties.

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another seamlessly, often drawing on several institutional discourses in a single comment. For instance, Susan drew from two institutional discourses: cultural differences and parenting knowledge.

After the mediation was complete, she explained that “people who have raised several kids look at issues differently than young parents.” As a novice mediator and a non-parent, I would not have picked up on this cultural difference. She continued, “The dads are thinking, ‘We need to do what is best for this kid, even if it means us raising it.’ The dad’s knew their own children were crappy parents!” When I asked her how she knew this, she said, “Experience leads to understanding...because the fathers had experienced life and seen its ups and downs, I just thought they would be on the same page for that kid. They didn’t think their drug-using, or former drug-using children, would make great parents. And they wouldn’t. Age is a great teacher.” In this instance, Susan picked up on the cultural issue of age. Because the parents were so young, they had not yet experienced the benefits and challenges associated with life. Susan knew the fathers would have more experience as a result of their age, and this experience would translate into better care for the child—which was the goal of all involved parties.

An example from an interview further bolsters the cultural issue of age. The following comments were made by an attorney-mediator named Theresa, who recently made the decision to solely practice mediation and cease practicing law. The following response was to the question, “Are there any stories you tell during mediation:”

I mean, I think we’re all shaped by our human experiences before we get into mediation and I guess it depends on what problem they’re having and where they are in their life, even their generation -- you know, their age. I mean, I don’t hesitate to tell little stories like that and I think that it can be a real effective communications rule to say... ‘Hey, you know, this is something we can all have



in common. We might not agree on how we get to the end, but we all have that same common experience.’ And that’s a lot of what I try to do.

The focus on generational, age-based differences is an important part of the cultural competence repertoire. Theresa’s quote focuses on common experiences that humans gain as they move through life, and she brings these experiences to the forefront of her mediations to build common ground. Donald, a retired judge with a very successful private mediation practice, said, “And in my experience, if you can find common ground at all, you can build on that common ground to a settlement.” Within the cultural competence repertoire, mediators focused on language, age, and ethnicity to build common ground between the participants. Before summarizing the key terms and habitual forms of argument used in this repertoire, one more example will demonstrate its utility during an actual mediation.

This scenario emerged during a mediation that I was co-mediating with Jack. Jack is a very successful, semi-retired businessman. This particular mediation involved a dispute over the purchase of an automobile, the industry with which Jack is involved. In a nutshell, a woman wanted to sue a used auto dealer because he did not disclose all of the problems with the car she purchased. The dealer’s position was that the online advertisement said “as is,” meaning she bought the car with any current problems. The woman was from out-of-state and was fairly belligerent with her language regarding the dealership owner, referring in private to him as “the foreigner,” “the Muslim,” and “a potential terrorist.” She made these comments because he was from a Middle Eastern country and she was constructing a version of his identity that painted him as the

antagonist or villain. In short, she was trying to get us on her side, as she was a Caucasian woman and we were both Caucasian men. Jack calmly deflected these comments and deescalated the angry tone by referring to the auto dealer by name. The woman was asking for either a new car or the monetary equivalent of a new car, and the owner was not backing down from his offer, which was more than \$10,000 away from her demands. The woman was quite explicit about going to trial to win this case, admitting that she had even sued her own sister.

It was at this point that Jack used “questioning as a way to disguise [his] statements,” as he stated at the mediation training. For instance, he asked the woman and her attorney about “how much it would cost them to prepare for trial, fly her back for the trial, and take off work.” In this case, the parties could not sue for attorney’s fees, so if her side lost she would be out a lot of money, time, and energy. Jack then asked the owner’s attorney if he had thought about the “jury make-up in Smithton and who they might side with,” and “as a car man myself, even if [the other disputant’s] request seems high, is it unreasonable?” These questions stimulated a long discussion between the owner and his attorney, and when they called us back into the room, they were willing to move toward her negotiating price. However, they needed some more documentation, so both sides agreed to remediate in the future. Jack’s questions stem from his awareness of the cultural demographics of the town and from his personal experience in the car business. While talking with him after the mediation, he said, “The white, Christian, conservative people in this area, who *will be* on that jury, will take one look at that guy,

get angry, and side with the lady. They'll think, 'Oh, he's a terrorist, and he's taking advantage of this poor single mom.'”

Several interesting things can be inferred from Jack's comment and questions. First, he uses his familiarity with the cultural demographics of the area as a resource to move the mediation forward. He relies on the institutional discourse surrounding American-Middle Eastern relations (i.e., American foreign policy) to make his point, as well as political institutional discourse (i.e., angry white conservative jury members). Second, he disguises the statement he wanted to make to the attorney with a question, thus allowing the attorney to explain the idea to the auto dealer. This preserves the trust in the client-attorney relationship and creates the perception that the attorney was in “control” of the process. Finally, Jack's comment about being in the car business – an occupational culture with its own rules and norms – bought him credibility with the disputants and attorneys and helped him build common ground between them.

Table 2 is a summary of key metaphors, terms, jargon, and habitual forms of argument that are part of the Cultural Competence repertoire, some of which were from the preceding analysis and some of which were from other parts of the data set. An interesting aspect about the cultural competence repertoire was that it was not taught through formal training or emphasized at professional mediation conferences and meetings. For instance, out of several hundred pages of CRC training materials, not a single slide was geared toward explicating cultural differences. In addition, at the state-wide mediation conference I attended, only one session out of a possible 33 discussed

cultural differences in even a tangential way by focusing on the legal ramifications of same-sex marriages.

Table 2: Cultural Competence Repertoire

<b>Participants' Local Discourse</b>	<b>Institutional Discourse</b>
<ul style="list-style-type: none"> <li>• “Generational differences”</li> <li>• “Age is a great teacher”</li> </ul>	Connection between age and experience
<ul style="list-style-type: none"> <li>• “Different neighborhoods”</li> <li>• “Not from the same planet”</li> </ul>	Regionalization (Giddens, 1984) leads to different perceptions
<ul style="list-style-type: none"> <li>• “They don’t share the same vocabulary”</li> <li>• “Speak their language”</li> </ul>	Language shapes how conflict is approached
<ul style="list-style-type: none"> <li>• “Work-related abilities”</li> <li>• “Human resource training helps you deal with others”</li> </ul>	Occupational training enables and constrains understanding
<ul style="list-style-type: none"> <li>• “Even intelligent people can act stupid”</li> <li>• “These were engineers with PhDs who could not speak to one another”</li> </ul>	Education can lead to understanding and resentment
<ul style="list-style-type: none"> <li>• “Traditional Hispanic household”</li> <li>• “Very paternalistic Hispanic man”</li> </ul>	Ethnic norms and stereotypes are part of how we see others
<ul style="list-style-type: none"> <li>• “She has all the money and he’s got nothing”</li> </ul>	Social class is code for opportunities

This lack of formal attention suggests that cultural differences themselves are taken-for-granted by most people, but effective and reflective mediators pick up on these issues by scanning the environment for religious, ethnic, educational (e.g., vocabulary differences), and age-based differences. These differences are critical to the understanding of worldviews that can stymie the mediation process and prevent common

ground. In short, mediation training sessions and professional conferences may pay lip service to the importance of cultural differences, but recognizing how these differences actually inform or impede a conflict is another story. The mediators that I interviewed and co-mediated with, however, found ways to bring cultural differences to the foreground. This repertoire was a tool that mediators used to build common ground.

### **Volunteer Pride**

The volunteers -- I guess I'm still kind of partial, but the volunteers just really - really work hard at learning more, learning more about the process and, you know, [are] willing to be more open about their - what they need to improve on and that kind of stuff...cause they're - they're totally in it for their heart. You know, it's not their - the business part isn't also tugging at them, where a private practice mediator is, you know, considering it in this aspect and, I guess kind of the feeling of, the private mediator feeling of showing that they're confident and they don't, they don't need to learn as much.

Dawn, Director of a CRC discussing different types of mediators

Community mediation centers are unique because they are staffed by volunteers—people donating their time to help others solve their problems. The idea of choosing to listen to horrific family dilemmas that often involve abused children may seem a bit masochistic at first, but after talking with many mediators, attorneys, and judges, it became clear why volunteers do what they do. One could also conclude that listening to civil and contractual disputes, employment conflicts, and insurance claim denials would lead to a cynical outlook on life. However, my participants projected an

optimistic persona and always strived for a workable agreement, regardless of how dire the conflict first appeared. The mediators really found comfort in talking about the benefits of being a volunteer.

In the opening quote from this section, Dawn describes the qualities that make volunteer mediators so successful. Her organizational position as the executive director of one of the 18 southern Conflict Resolution Centers provides her with the authority to offer such a judgment. She deals with both volunteer and private (e.g., paid, fee based, or attorney-mediators<sup>7</sup>) mediators on a daily basis. Further, Dawn worked in community mediation centers in other states, so her comments can resonate with the mediation field in general. Dawn juxtaposes volunteer and private mediators in a manner that suggests volunteers are more amenable to education, to sharing their knowledge, and to learning from their mistakes. She also says that they are in mediation “for their heart,” which implies that private mediators are not mediating to resolve issues and improve the community but to make money. Her discursive construction suggests that private mediators are biased because of the financial incentive to resolve the case. In addition, her discourse suggests that fee-based mediators do not strive to learn more about mediation, do not share knowledge with others for competitive reasons, do not respond well to criticism, and project an aura of omniscience. Dawn’s comparisons, then, highlight the institutional discourse that constructs volunteers as very different from

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<sup>7</sup> It was interesting to note that mediators always talk about “attorney-mediators” and never “mediator-attorneys.” This discourse points to the social prestige associated with the legal field, always categorizing the lawyer identity as primary. This categorization may also be related to the fact that the legal occupational identity earns the majority of the income for most attorney-mediators.

private (e.g., paid) mediators, both in their goals and approaches to the field of mediation. This pattern was a common way of constructing the differences between paid and nonpaid mediators for many of my participants, including several attorney-mediators.

Later in our interview Dawn said, “Sometimes attorney-mediators really fall into the pressure of the other attorneys, and they really feel like they need to be evaluative.” Rather than facilitating a dialogue between two parties, evaluative mediators offer solutions and try to solve problems *for* disputants and not *with* them. Another participant named Kyle, a conflict resolution professional who has been involved in corporate mediation settings for 25 years, said,

I think when I used to teach [mediation] years ago, we used to talk about evaluative mediators and facilitative mediators. Evaluative mediators, are, or were, being paid to solve disputes involving dollars, you know, civil cases and lawsuits...and facilitative mediators solving problems with ongoing relationships, usually in family mediation settings as volunteers, which are one, of, uh, the hardest mediations to do.

Evaluative mediators act more like attorneys and arbitrators by actively trying to solve problems for people. They talk more than they listen, and they are usually critical of people’s suggestions. Later in her interview, however, Dawn continued, “There’s more than one kind of mediation. You know, a lot of [mediators] think that it’s evaluative and you’ve got to, you know, be open to the understanding that, some mediators are evaluative - evaluative and some are not. You can be an excellent mediator, but there’s

almost kind of no right or wrong way.” Even though Dawn (a) self-describes her style as “facilitative,” (b) admits she is partial to passionate volunteer mediators, and (c) critiques the evaluative style of attorney mediators, she then says there is “no right or wrong way.” This contradiction functions to safeguard her previous assertions about evaluative mediators. Her value judgment regarding evaluative mediators could be perceived as condescending, so the disclosure that being an evaluative mediator is not problematic eases her possible anxiety. This sort of inconsistency was common across most of my in-depth interviews and is indicative of how people discursively structure their worlds in contradictory ways, which discursive scholars have long acknowledged (Fairhurst, 2007; Fairhurst & Putnam, 2004; Potter & Wetherell, 1987; Sheep, 2006).

Other participants did not differentiate between volunteer and private mediators. Judge Thompson, a county judge in Smithton, said, “People who volunteer are doing it because they realize it’s a good service and so I don’t necessarily think there’s - there’s any difference in the quality of mediation that you get from someone who’s being paid versus a volunteer.” Judge Thompson sends many parties to the CRC from his courtroom, as well as uses several private mediators. He believes that volunteer mediators provide a community or public service that assists impoverished clients. Many respondents believed that the distinction between volunteer mediators providing a “public service” and private mediators running a business was a crucial difference, leading to a *public-private dichotomy*. Judge Thompson also said that several attorneys have told him that “even their lower income clients...feel it is important to pay something...because there’s kind of a natural ‘get-what-you-pay-for’ feeling. There is a



perception they are getting better quality mediation if they are paying something. I don't think that perception is necessarily accurate." The *payment perception* related to mediator quality was a popular topic among the judges and attorneys. Another county judge, Judge Robert, said that clients that have to pay something for attorney's services are "always more appreciative" because they have "an investment in the process." In short, the discussion of financial investment in the process of mediation, specifically paying the mediator, is part of the institutional discourse pitting volunteers and private mediators against one another. The previous responses to the interview questions highlight several key aspects regarding the institutional discourse of volunteer mediators: financial investment is productive and a public-private dualism exists.

During mediations, mediators enact local discourse about the volunteer repertoire in two ways: (a) as a *rapport* builder through humorous and non-humorous discourse and (b) as a *defensive* strategy to save face or move the process forward when running out of time. For example, I co-mediated with a veteran mediator named Camille. During her introduction she stated, "And you know that money that you pay to be here, it isn't going into my pocket," she said with a smile. "I am here because I believe in this process as a way to help you solve your issues cheaply and swiftly, it ain't to make me rich. I am a volunteer, and if I didn't believe in this process, believe me, I could do more constructive things with my time." Camille's use of humor and focus on the nonfinancial benefits of serving as a mediator suggests that she truly does believe in the process. The function of her comment is to create a comfortable environment, establish a level of trust, and break the tension through humor.

The introductory segment of mediation is often an ambiguous interaction because most people do not know what to expect. Community members are nervous, anxious, upset, angry, and a bit fearful of the future. They want to act in accordance with the norms of mediation—being a good participant, so to speak—but they do not know the rules. Telling the clients and attorneys that you are there because you believe in the process is a way to build legitimacy for the process. Another mediator, Jack, basically says the same thing as Camille, but he also added that “this process is effective, which is why lots of people use it. We solve 85% of the cases here at the CRC, saving people lots of money, time, and stress.” Again, Jack’s focus on time and finances is a way to increase the acceptability of the process of mediation.

Mediators also talk about volunteering as a defensive strategy to save face or move the process forward when running out of time. When conducting my first co-mediation with a veteran mediator named Janelle, a mother and business owner, one disputant kept talking in circles about the same property division issue. Even after his attorney told him how the judge would rule on the matter and Janelle advised him to take his attorney’s advice, he was still stuck on this one issue. Janelle finally stated, “Look, we are volunteering to help you out. You are getting advice from your attorney and your impartial mediators. We aren’t trying to steer you in the wrong direction.” Janelle’s construction of volunteering implies that we were providing an economical service to help him move past his problems. After the mediation, she said, “When he would not take our advice or his attorney’s advice, I was thinking, ‘Then why are you here?’” In this case, the man eventually accepted the advice he was given and the case settled. It

cannot be said how much of the settlement was attributable to Janelle's comment, but the man did change his mind very quickly after she stated it. A second example will better explore the defensive use of the volunteer repertoire.

I was co-mediating with a neophyte mediator named Craig. This mediation lasted 5 hours and 45 minutes and involved a highly volatile client. The normal session length at the CRC is four hours, but if you are close to resolution, the mediator can choose to continue. In this case, the attorneys tried to control every aspect of the mediation. They did not even want to hand over their proposals to us. One client was very upset with his situation, and he even yelled at the CRC case manager, accusing the organization of acting unfairly. At one point, I turned to walk back into the client's room with Craig, the client, and his attorney, and the client got one inch from my face, to where I could feel his breath, and while smirking with an evil grin, he said, "Go on, touch me. Touch me, I dare you. I know the laws. Go ahead and touch me." At this point I said we were finished, which upset his attorney. Several minutes of haggling ensued as to whether the mediation was over or not, and at one point, my co-mediator stated, "We are just volunteers. This is not right."

After several minutes of negotiating how we would proceed, Craig again said, "We are volunteers here, and we are already an hour over our time frame. We have lives outside of the center." Craig's use of the volunteer repertoire highlighted the fact that we are not getting paid for our time and that we had already exceeded our maximum mediation limit. Further, it functioned to alert the attorneys that if we were going to settle this issue, we needed to do it soon. The attorneys apparently listened. Roughly ten

minutes after that comment, we were on our way home. I am not claiming that this single comment caused the settlement, but it did reframe the situation. They were reminded that the mediators were not being paid for their services, and when coupled with the fact that I was physically threatened and almost assaulted by one of the clients, the attorneys wrapped things up and the case ended in a final agreement.

Overall, the volunteer pride repertoire is enacted on the local level in different ways but is always connected to a specific type of institutional discourse. On the local level, mediators can talk about voluntarism enthusiastically with humor, as a rapport builder, to enhance process legitimacy, as a defensive strategy, or to move the process forward when approaching impasse. Table 3 illustrates several comments enacted on the local level that tie to the institutional aspects of volunteering. In each instance,

Table 3: Volunteer Pride Repertoire

<b>Participants' Local Discourse</b>	<b>Institutional Discourse</b>
<ul style="list-style-type: none"> <li>• “We are only volunteers here...”</li> <li>• “They don’t pay me enough for some of these situations...”</li> </ul>	<ul style="list-style-type: none"> <li>• No financial remuneration</li> <li>• With limited resources, only so much is possible</li> </ul>
<ul style="list-style-type: none"> <li>• “We volunteer because we believe in the process”</li> <li>• “I do this to make the community a better place to live”</li> </ul>	<ul style="list-style-type: none"> <li>• Mediation is an effective process that can solve your problems</li> <li>• Implicit comparison to paid mediators who mediate only for the income</li> </ul>
<ul style="list-style-type: none"> <li>• “As a volunteer, I am trying to only provide you with workable ideas...”</li> </ul>	<ul style="list-style-type: none"> <li>• Strategy to move the process forward</li> </ul>
<ul style="list-style-type: none"> <li>• “I’m not getting rich off of this” (while smiling)</li> </ul>	<ul style="list-style-type: none"> <li>• Humorous comment to remind them of effectiveness of the process</li> </ul>

the underlying structure, or institutional discourse, is the juxtaposition of volunteer and private mediators and their different goals, approaches, and motivational factors.

## **Parenting Norms**

I come in just as an individual, a mom, a grandma, you know... And it's real hard sometimes not to input that because when - when they're terminating mom's rights and you see grandma sitting there and you know that now she's not going to be able to see her grandkids simply because they're terminating mom['s parental rights], it kills me because I'm a grandmother. You know, if my daughter-in-law screwed up and got the kids taken away from her, then, you know, and I wouldn't be able to see my grandkids, that would kill me.

Janelle, CRC veteran volunteer mediator describing why she mediates

The CRC deals mainly with family conflicts that include divorces, divorce modifications, child custody and visitation battles, property divisions, and child protective services (CPS) cases. Janelle's comment about terminating parenting rights is in reference to CPS cases, and that is a last resort effort of the courts to protect the children from the parents. Mediators and attorneys talked about the importance of parenting regardless of the severity of the case; if it involved children, participants invoked this repertoire. The parenting norms repertoire functioned in several different ways. At times, the mediators and attorneys would discuss parenting norms and ideas to empathize with the disputants, but they would also discuss personal parenting experiences as a way to suggest that the disputant's ideas were off base, illegal, or harmful to the children. This section will explore both sides of this repertoire through numerous examples.

Janelle's opening quote illustrates the empathy she felt for the disputant whose rights were being terminated. She says that it is difficult to not "input" this feeling, because she has experienced the role of motherhood. In other words, having directly experienced raising children and understanding how complicated and rewarding that process is makes it difficult to hide those empathic emotions. This comment is functioning within the institutional discourse of neutrality, because Janelle is hiding her true feelings to sustain the perception of impartiality. Interestingly, a few minutes after Janelle said she tries not to "input" her empathic feelings, she highlighted another way to talk about parenting experiences:

Anytime you get Big Brother involved, it's - and I don't think fam. - I think all family mediators need to be non-attorneys because I think attorneys see so much crap through divorces and listen to so much crap that they become hardened or - you know, they don't have the empathy -- sympathy, whatever, and they don't have the compassion, most of them. Now there are some that have - they just don't have the compassion. It's just like, 'Get in, get out, okay, whatever. Let's go. Just - you know, just decide.' Whereas, somebody that's not a licensed attorney is going to be more of a bring my life skills, bring my, you know, experiences and bring my experience as a mom - look at my other mediations and bring it in, too.

This comment directly opposes her previous comment because she says she relies on her experiences to show compassion during the mediation. The variance between these two comments is typical of the participants' discourse, because social actors often

use contradictory forms of discourse (Potter & Wetherell, 1987). Janelle suggests here that non-attorney mediators more effectively used their “life skills” in a mediation to help the disputants, whereas attorneys focus too much on the law, creating a dehumanizing quality that Janelle dislikes. Thus, acknowledging that she both conceals and reveals her emotions and experiences during mediations might be an indication that she exhibits an extemporaneous mediation style that can be adapted on the fly. By concealing and revealing parenting experiences as she sees fit, Janelle can increase the disputant’s trust in her and in the process.

It is not just mediators that feel the need to share their experiences as a parent. Attorneys have said, “Hey, you know, I’m a parent too.” This shows that parenting is a common human experience and a great way to build common ground with the disputants. For instance, Tabatha said, “You know, I’m kind of like a little mother thing anyway. I’m around kids all day, so probably I treat [the disputants] like kids... Well, and I tell them, too, you know, ‘I’m around children all day.’” Tabatha not only mentions that she is a parent but she focuses on her occupation as a teacher. She mentioned how she might treat the disputants in a parochial manner because that is how she was trained. Fredrick, the director of a Conflict Resolution Center and a volunteer mediator, stated,

I’ll tell them, ‘I don’t - when I walk out of here today, I probably won’t even remember your name. I don’t see you and I don’t care what happens. It doesn’t matter to me, but as a person that lives life and has been divorced and had children and step-children and grandchildren and all that, you know, I can tell

you that this is what - the way it's going to be, and so, yes, I have some opinions. I have some life experiences that I'm willing - want to share with you, and I'm telling you it's not always going to be like it is today.

Fredrick's comment again illustrates the trust building function of sharing personal parenting experiences. When asked whether he will discuss specific parenting norms and strategies, he said, "I share what I have seen in other mediations, and rarely, well, no, I will share things from my life...but I like, you know, to rely more on what I've, uh, what I've seen in previous mediations." Thus, it is acceptable to share parenting ideas, but, for Fredrick, the use of examples from other mediations might be preferred to personal experience.

Not all of the comments regarding parenting norms were about building trust. Many of the comments were covert ways to point out (a) inappropriate parenting behaviors and (b) parenting decisions that would be viewed unfavorably in the courts. These parenting comments functioned as a "reality check" to the parents, who might be engaged in wishful thinking about their scenario. For example, Susan and I were conducting a co-mediation that involved two young parents each accusing the other of continued drug use. It became quite apparent that the father had been clean for several months but the mother was still using a variety of drugs. Susan calmly asked the parents, who were in separate rooms, "Are these good parenting decisions; what do you think the judge would say; and would you feel comfortable if the other parent was doing this in front of the child?" The purpose of these questions was to allow the parents, in discussion with their attorneys, to realize that their behaviors were destructive to



themselves and their child. In this case, the parenting comments pointed out inappropriate behaviors and alluded to how the court would view these actions: unfavorably. It was in both parties—and the child’s—best interest to solve this problem in the confines of mediation where information is kept confidential.

A second example illustrates the reality checking function of the parenting repertoire. The situation occurred while co-mediating with Sarah Beth, a mediator who graduated from training in 2008 but had very little mediation experience. We had to deal with a capricious situation involving a divorce, a young child, and two young parents with a large income disparity between them. We began the mediation with everyone in the same room, including both disputants and their attorneys, and we were even able to begin a conversation between the two disputants for about ten minutes. The father then became extremely upset over an income tax issue and jumped up from the table and started yelling and calling his ex-wife names. We walked the man and his attorney to another room before talking about the issues further with either client. Once we were alone with the female client and her attorney, who also happened to be a veteran CRC mediator, we began asking a series of questions to better understand the disputants’ relationship. It was apparent that the father was trying to control the mother’s life, even though they were divorced, by constantly accusing her of being a bad mother and trying to monitor her actions. However, to the father’s credit, the mom did want more time to herself so she could hang out with friends.

Upon hearing this, Sarah Beth said to the mother’s attorney, “I understand that your client wants more time to herself, I am a parent too, but what do you think the

judge would say?” The attorney explained to his client that her decision to want more personal time would not help their case, so we reframed her request to have more personal time as giving the father extra time with the child on the weekends. When we explained this to the father, he knew right away that she wanted more time to party, which he was fine with, because he just wanted more time with his child. Sarah Beth then said, “Do you think that spending more time with your child is a good or bad thing, and what do you think the judge would say? Speaking as a parent, I can tell you it is a good thing to spend more time with your child, especially if you don’t think momma is a good caregiver.” This innocuous comment helped the client to understand that he would be getting what he wanted (more time with child) and she would be getting what she wanted (more personal time), but he had to give up trying to control the mother’s life. And he did.

Sarah Beth’s comments not only functioned as a reality check as to what the judge would find favorable but it also boosted the father’s confidence in the mediator. It fulfilled both the trust building and reality checking functions. All of the parenting comments were tied to institutional parenting norms such as spending ample time with children, not consuming drugs or alcohol in front of kids, keeping them in the care of well-qualified caregivers, and ensuring that their educational, health, and social development needs are being met. When one of these institutional norms was violated, mediators would invoke the parenting repertoire to move the process along and serve as a wake-up call to the parents. Table 4 illustrates the connection between the local and institutional parenting norms discourse.

Table 4: Parenting Norms Repertoire

<b>Participants' Local Discourse</b>	<b>Institutional Discourse</b>
<ul style="list-style-type: none"> <li>• “Hey, you know, I’m a parent too...”</li> <li>• “[This child] isn’t your first rodeo, is it... Mine either”</li> </ul>	<ul style="list-style-type: none"> <li>• Empathic connection with disputant</li> <li>• Acknowledgment that disputant understands parenting duties</li> </ul>
<ul style="list-style-type: none"> <li>• “Would you be happy if your spouse did drugs in front of the child?”</li> </ul>	<ul style="list-style-type: none"> <li>• Pointing out harmful actions to child’s development</li> </ul>
<ul style="list-style-type: none"> <li>• “Some kids are just wild...believe me, I know”</li> <li>• “I find professional mediators, whether they are attorneys or grandmothers, which is a profession”</li> </ul>	<ul style="list-style-type: none"> <li>• Recognition that parenting is a difficult experience</li> <li>• Parenting is a professional endeavor</li> </ul>
<ul style="list-style-type: none"> <li>• “You have to provide health insurance, the primary parent always does, I do...Do you (to the attorney)?”</li> </ul>	<ul style="list-style-type: none"> <li>• Children’s health and social needs must be considered and cared for</li> </ul>

The parenting norms repertoire was the most gendered repertoire that emerged. Other than Fredrick, no other male participants used this repertoire. This could be for a few reasons. First, women tend to dominate the field of community based volunteer mediation, and there are more women mediators at the CRC than men. The CRC currently has 17 female mediators and 12 male mediators. Second, some of the male mediators that participated in this study were not fathers. Third, participants discussed what they were comfortable relying on as intellectual resources during mediation, and perhaps for many men, they are not comfortable discussing parenting norms. This could be tied to notions of masculinity and what it means to “act and talk like a man,” or it could be an indication that the men did not have much knowledge about parenting norms. Fourth, when asked to describe the resources they use in mediation, men focused

more on their professional and occupational experiences, which leads us to the fourth repertoire.

### **Business Professional(ism)**

And I think a lot of those attorneys also know me and have respect for the work that I do. They know that I can be neutral and have, you know - I'll communicate with them, and I think that helps, that they do respect what I do for Child Protective Services.

Celeste, mediator describing how her occupation affects her credibility

All the volunteer mediators at the CRC have different occupations and levels of experience in their respective professions, which includes being a stay-at-home parent. They all rely on their professional and career experience during mediations as discursive resources, and because of this, the business professional(ism) repertoire has several components. Many mediators discussed their career experiences as a way to empathize with the clients, whereas other mediators talked about their career to enhance their expertise around a point of contention. The mediators that focused on their career expertise acted more as evaluative mediators, providing advice on specific issues. In addition, through the interviews and co-mediations, I learned how mediators acted professionally during mediation. Acting professionally included physical appearance, reactions to emotional outbursts, offering clear opinions, remaining neutral, and acting ethically. Finally, mediators discussed professionalism in a way that equated it with rational decision making and relegated emotional displays as irrational and

unprofessional behaviors. This section will explain the discursive multifunctionality emerging in the professional(ism) repertoire.

Celeste's opening quote shows that she pays attention to whether the attorneys perceive her as a credible mediator or not. She feels that her job with Child Protective Services increases their "respect" for her, and she believes that her career prepares her to act professionally during mediation. Her CPS career experience has prepared her to remain "neutral" and "communicate" with attorneys and clients in an effective manner. Celeste clearly has a form of expertise regarding family law mediation cases, but she said that "to earn respect from others, you must show them respect in return." In short, there is an implicit norm of the reciprocity of respect. Many mediators said that acting professionally has to do with giving and seeking respect from others, acting impartially, communicating clearly with all the parties, and acting politely. For example, a board certified family law attorney named Vernon, who has been practicing law for over 20 years, said professionalism includes "acting fair and polite. Non-threatening. That's it. As long as you're fair, polite, and non-threatening, then I think, I think that's all you should do, anyway. Just be a good person." His comment suggests that there is a universal definition for being a good person, a standard which can be difficult to achieve when you are dealing with people who are at their worst. As one mediator put it, "You can't expect people to be their best when they are at their worst."

Mediators still strive, though, to accomplish this goal of a professional demeanor while dealing with volatile issues and emotionally charged people. Theresa discussed some of her strategies:

I try to acknowledge, 'You know, hey, I understand that this is a very difficult situation for you. It's not one that you chose for yourself, but we are here today and we have a goal. You know, is there something I have done which has brought about this response?' And if they say, you know, 'No,' or they're just very belligerent or kind of - I say, 'Well' - for example, if someone stands up and says, 'Well, I've had enough of this! I'm getting out of here. I'm leaving this mediation,' I usually try to remain extremely still, don't move at all, except to say, 'Excuse me. The judge has entrusted this to me and the mediation's not over until I determine there - there's an impasse. Please have a seat.' And usually the contrast - they're, you know, jumping up and grabbing their stuff, ready to stalk out the door, the contrast of the someone who's not budging sends a non-verbal cue, 'You better sit down or she's going to call the judge.'

Theresa's quote is meaningful on several different levels. First, she frames the client jumping up to leave the mediation in anger as an irrational, emotional behavior. Is it such an irrational action? When people are going through psychologically and financially stressful situations, is it reasonable to expect them to negotiate calmly with someone they are getting divorced from? Perhaps not. People cannot mechanically detach from their feelings to rationally weigh the pros and cons of a situation and make the best calculated decision; the emotions are always tied to the decision making.

Describing her expectations of effective mediators, Theresa said, "Neutral, professional, and I'm not sure the right word is 'detached,' but the concept I'm trying to convey is that I have seen and, unfortunately, on one or two occasions, I felt myself drawn into almost

like a verbal battle with somebody.” In theory, professionalism means acting detached from the immediate situation, exhibiting no emotions, and perhaps not being as actively involved in the discussion to maintain this calm persona.

One of the keynote speakers at the professional mediation conference I attended addressed the idea of the “myth of rationality.” Benjamin (2009, 2010) has a series of articles debunking the idea that effective mediators should always be calm, polite, and rational. Benjamin (2009) believes that “the myth of rationality has fueled the quest for truth and the belief that for every issue or controversy there is a discoverable truth or right answer” (para. 6). He also said, “Logical arguments—suggesting, for example, how negotiation might save time and money—while eminently rational, are seldom likely to overcome resistance and often appear as unconvincing and hollow appeals to people who are hurt and angry” (para. 11). Benjamin critiques the idea of emotionally detached or professional mediators. He says that acting professionally does not include the unassertive, always respectful, portrait that the institutional discourse of mediation paints.

For example, in one of my co-mediations, the lead mediator was anything but neutral, passive, and calm. He relied on his previous career in the Child Protective Services field, his experience in governmental positions in the local city, and his knowledge of the family court system and typical judge’s rulings to influence the disputants. He used questions to counsel or direct the disputants without actually having to state any information directly. “Do you think the judge would allow you to watch a child that young without having been a primary caregiver for very long; I have seen the

courts take children away for parents with continuous drug abuse problems; and I haven't seen a judge around here rule that way." In this instance, the mediator is using his professional and previous mediation experiences to alert the disputant that his negotiation position is unacceptable. These questions were effective because they involved the attorneys in the conversation and allowed them to provide legal advice. Comparing how mediators talked about professionalism in the interviews and at conferences to how they actually mediate is a stark contrast. Many mediators rely on the institutional discourse learned at training sessions, conferences, and meetings to discuss professional standards and ethical norms, but in practice these ideas are not always followed.

However, not all of the mediators focus on impartiality when talking about or expressing professionalism during their mediations. When describing her mediation style, Tabatha said she tries to make the clients "feel comfortable." She continued, "I try to dress professional, for the reason being, even though I am a volunteer, you know, I make sure—now wait, I take that back. I dress nice. I maybe don't wear my Sunday best, but I try to dress nice...I try to dress where it doesn't matter if it's somebody on the street, they're comfortable." At the beginning of this comment, Tabatha constructs mediators in a way that suggests they do not have to dress professionally, saying "even though I am a volunteer," I will still dress up. She then alters her line of thought and refocuses her goal in mediation, which is to make people feel comfortable. In short, Tabatha is empathizing with her clients by trying to match their appearance to the best of



her ability. She went on to say that she does “not wear lots of jewelry” while mediating, again to place herself on an equal level with the disputants.

Another way that mediators enact the business professional(ism) repertoire is through actual professional materials. *The Texas Lawyer’s Creed: A Mandate for Professionalism*, created by the Texas Supreme Court (1989), is a document that outlines the professional and ethical guidelines for attorneys in the state of Texas. Although the document focuses on the professional obligations of attorneys, a retired judge and active private mediator, Judge Donald, said that he emails the creed to attorneys and mediation clients to remind them of their professional obligations during mediation. He said that mediators should follow many of the same guidelines in the document, such as, “I will be courteous, civil, and prompt in oral and written communications,” and “I will give the issues in controversy deliberate, impartial, and studied analysis and consideration.” In addition to the creed, many CRC mediators show informative films to the clients when the cases involve children. The CRC has two excellent movies that highlight the challenges associated with divorce. People often think of divorce as a panacea to their problems, when it is actually just the beginning of a new set of problems. When asked if the mediators use any resources, many of them discussed the “movies,” reasoning they are “professionally done” and really get the point across about the “effectiveness of mediation.” For many CRC mediators, the business professional(ism) repertoire includes materials, such as the Creed and the divorce films that establish a level of professionalism in the mediation field.

Not all professional or career-related experiences are beneficial to the mediation process. Elizabeth, a nationally renowned mediator and mediation trainer who also owns a conflict resolution business and has started mediation programs on several university campuses, said,

I'm an educator. I'm a counselor, [it] is my background professionally...[but] I think some of the worst mediators are people who come from the mental health field because we think we're going to be - we're going to be therapists in there. We go too deep into the issue. We can't take off our therapy hat...When I train in groups, I'm not trying to pick on mental health folks, but typically we have the hardest time making the shift and so, you know, I'm big on, 'Take off your counselor hat or your psychologist's hat and put on your mediator hat. Really - really focus,' because also people will work to stay comfortable in the discipline they're trained in.

This is a fascinating comment on several levels. First, Elizabeth expressed the idea that many mediators face occupational constraints, or as Burke (1954) says, exhibit trained incapacities. She said that problems emerge in mediation because mediators can't "take off" their occupational hat. Professional training such as counseling, therapeutic interventions, and analytic academics can constrain, or even hinder, the mediation process. They "go too deep into the issue," perhaps searching for the cause of a phenomena rather than helping the disputant understand and overcome it. Second, Elizabeth is part of the mental health field that she critiques. She uses the term "we" several times to include herself as one of the mediators who can be overly analytical;

however, Elizabeth is recognized as one of the top mediators in the nation. Her self-inclusion into the overly analytic mediation group is a form of humility, because she is not a self-promoter. She is very reflective about the state of mediation and her style as a mediator. Third, her point that “people will work to stay comfortable in the discipline they’re trained in” implies that people experience different types of training throughout their lives. People hierarchically arrange the sets of knowledge they have accumulated and rely on the one they are most comfortable with. For most people this means wearing one “hat” more often, which typically consists of their professional nomenclature and approach to problem solving. Thus, when conducting mediation training, it is essential to stress that the mediation discourse supersedes other discourses and vocabularies. Elizabeth believes that the institutional mediation discourse that is taught at training sessions and emphasized at professional conferences must form the trunk from which people’s personal styles branch off. This discourse includes impartiality, empathic listening, rapport building and Socratic questioning.

For instance, the most common theme in the institutional discourse of mediation is “remaining neutral.” At least one third of the CRC training materials are geared to helping people ask questions in a neutral manner, responding to emotional outbursts with impartiality, and remaining fair to both sides in the dispute. In addition, all of the speakers at the professional mediation conference at least mentioned the significance of neutrality. At a quarterly roundtable, an event where Smithton mediators share experiences and discuss emerging issues in the mediation field, Cynthia, an experienced mediator and former CRC board member said, “We are not called upon to give up our

feelings, but to *act* calmly.” The purpose of her comment was to remind mediators that our feelings never go away, but she thinks that effective mediators hide those feelings. Even if this emotional masking is difficult or impossible to achieve—as Benjamin (2009, 2010) suggests—acting impartially is the essence of being perceived as a mediation professional. Table 5 highlights the local and institutional discourses forming the business professional(ism) repertoire.

Table 5: Business Professional(ism) Repertoire

<b>Participants’ Local Discourse</b>	<b>Institutional Discourse</b>
<ul style="list-style-type: none"> <li>• “Let me tell you, I know a little bit about the car and real estate businesses...”</li> <li>• “Sometimes they need a mathematician and not a mediator...”</li> </ul>	<ul style="list-style-type: none"> <li>• Expert knowledge builds credibility</li> <li>• Using professional skills can lead to a settlement</li> </ul>
<ul style="list-style-type: none"> <li>• “Knowing how to speak the language of business is vital...”</li> </ul>	<ul style="list-style-type: none"> <li>• Being able to use industry jargon creates the perception of knowledge and expertise</li> </ul>
<ul style="list-style-type: none"> <li>• “Nobody ever makes quality decisions under emotional stress”</li> </ul>	<ul style="list-style-type: none"> <li>• Belief that emotions can be detached from decision making</li> </ul>
<ul style="list-style-type: none"> <li>• “You’ve called me out here to mediate, my time is free but you’re getting paid”</li> </ul>	<ul style="list-style-type: none"> <li>• Attorneys and mediators should treat each other with respect</li> </ul>
<ul style="list-style-type: none"> <li>• “Some of the worst mediators are people from the mental health field...”</li> </ul>	<ul style="list-style-type: none"> <li>• Professional training can impede the process</li> </ul>

In summary, mediators rely on the business professional(ism) repertoire to achieve a wide range of functions. During mediation, they rely on their business experience to enhance expertise and they use their professional experience to create rapport and empathy. In addition, when discussing what professionalism means, mediators emphasized the ethical nature of acting impartially and many of them

reflected upon the constraints that their professional training provides. Through these discussions and observations, it was clear the mediators' discursive constructions reified the rational-irrational (i.e., rational-emotional) dualism. To them acting professionally means "not getting emotional or getting caught up in anything," as one attorney mediator put it. The only proper emotional display is that of a calm and collected demeanor, reminiscent of a rational calculating being known as *homo economicus*.

### **Cultivating Communities of Practice**

*"We are in the mediation garden to plant seeds that help people overcome their conflicts. We are at this conference to share our best gardening secrets."*

John, private mediator discussing the purpose of mediation conferences

*"Training and learning is about replenishing our quiver with a new set of arrows. Everyone uses different arrows...some are more effective than others, and we have to figure that out through trial and error."*

Jack, CRC mediator describing a metaphor for mediation training

Professionals who deal with people as part of their professional practice usually have to undergo some form of continuing education. This education can include formalized training, informal departmental meetings, peer-to-peer conversations, mentorships, licensing and credentialization, or attending professional conferences. Within the mediation field, mediators must at least complete four hours of ethics training every year to maintain their credentials. To fulfill this requirement, the CRC mediators have several options to choose from including mediator training sessions, conference

attendance, and mediation courses sponsored by State Bar associations. Although maintaining one's credentials is important, the most significant part of the ongoing education is learning from other experienced mediators.

The two quotations that opened this section were from highly experienced mediators, and they illustrate the significance of learning new strategies. This section answers the second research question by showing how the CRC members shared their interpretive repertoires, and in doing so, have cultivated a community of conflict managers. I draw on the community of practice (COP) literature as a lens to illustrate how the mediators learn from one another (Wenger, 1998). This section demonstrates that the CRC members form a type of COP not covered in Wenger's original model. Following Jack, above, I use a gardening metaphor to explain how the mediators learn and share their knowledge of mediation. This metaphor is appropriate because both gardening and mediation are complex, messy, organic, and natural processes that thrive when approached *systematically* (e.g., scientifically) and *artfully* (e.g., in-the-moment, spontaneous creativity). The analysis of this research question is based on extended notes from my participant observations, ethnographic interview data, and organizational documents, beginning with a consideration of the type of COP constituted by the CRC.

### **Budding Communities (of Practice)**

Well, in Michigan, the centers are operated by the State Court - or supervised, I guess is what they call it, the State Court Administrative Office, and funded by the state... And so each - the centers are more cohesive because they all, you know, have to report back to the state and have certain requirements. The state is

the one that gives them the grant for operations and it's what - for most of the centers it's the mainstay of their funding. And they can - they can do other funding if they want, but it's kind of - in Texas counties - the non-profits are very much more independent. But other than the Director's Meeting, which you have [seen], there's really not much cohesiveness - regarding how the centers are all, you know - how they all relate and you're kind of volunteering here, where in Michigan it's not volunteering.

Dawn, CRC Director describing differences in state mediation centers

The way in which COPs define their membership and boundaries can reveal what messages and symbols constitute membership qualifications. The COP literature represents one lens to understand how groups of people learn their work roles and organizational values outside of, and in addition to, formalized socialization processes. However, Wenger (1998), Lave and Wenger (1991), and Wenger, McDermott, and Snyder (2002) studied well established, commercial, and bureaucratic organizations with many hierarchical levels. These organizations have room to create informal learning communities "in-between" the formal hierarchical structures. On the other hand, the CRC is a nascent (e.g., budding) organization that is just beginning to flourish. The 2009 fiscal year marked the first time that the organization earned a profit and was able to function without grants from local government agencies. When combined with the small structure of the organization (i.e., physical location, number and type of employees, and small number of bureaucratic rules), it is clear that the CRC constitutes a different type of community of practice than what Wenger's research program was describing. This

nascent COP, captured by Dawn's opening comment, can be understood through several of the theoretical principles developed by Karl Weick.

As the CRC currently operates, it is a loosely coupled system (Weick, 1976, 2001) that procures many advantages from its messy flexibility. These include (a) serving as an effective structure for localized adaptation, (b) the acceptance of novel solutions, (c) creating space for self-determination by organizational actors, and (d) functioning on a small budget. The CRC could grow into a large conflict management bureaucracy that is tightly coupled to the court system, private business, and universities. It would then resemble corporate conflict management organizations such as the Arbitration Forum, but until this transformation takes place, the CRC functions as a COP rather than a traditional organization with pockets of COPs within it. A few discursive examples will substantiate this argument.

Zach: How would you label the CRC...as a business, or something else?

Valerie: We are a business because we have to serve clients, but I think, well yeah, we are also a community.

Zach: Tell me what you mean by *community*?

Valerie: Well, we are a group of like-minded individuals that come together to help people...we are driven by the mission to 'facilitate peaceful resolutions.' And our mediators are willing, and do – share their best practices with one another to fulfill, the, uh, mission, as best as they can.

In this excerpt, Valerie, who is the CRC administrative assistant and case manager, labeled the CRC as a community of "like-minded individuals," but she also said that the



volunteers “share their best practices with one another.” Further, her comments indicate that she is not referring to a part or some of the members sharing their practices, but to the whole community, all of the organizational members.

Another volunteer mediator named Cynthia, who is also a former board member and one of the CRC mediation trainers, said,

I like to emphasize the reframing. You noticed that we did different things. We each picked the things that we felt we were best at. And I like the reframing part because I think that’s the skill that people come away with that is most useful for their life outside of mediation.

Cynthia was explaining what she emphasizes when she conducts mediation training. She said that each of the trainers focus on “different things,” because they each have different areas of specialization. Her primary emphasis is on a communication strategy called reframing, where mediators aim to replace emotionally charged words with more productive ones, which mirrors Fairhurst and Sarr’s (1996) suggestions of using jargon, spin, contrast, stories, and metaphors to help organizational leaders connect with others. Cynthia’s comment about training practices is more interesting with a bit of background information. I was present at the three meetings the CRC had to prepare for the spring 2010 training session; these were very informal sessions where my input was on an equal level with the other trainers. They positioned me as the communication expert. With the flexibility associated with a loosely coupled system, and the fact that 2010 was only the second time the CRC conducted its own training, it was apparent that they were tilling the soil as they moved along. That is, the manner in which the trainers divided up

topics was an organic, informal, and comfortable conversation that included lots of humility and compliments of each other's strengths as mediators and trainers.

In short, the natural conversations could take place because of the nascent nature of the CRC as a community of practice. This community is made up of loosely-coupled organization of like-minded volunteers all sharing the same mission: to facilitate the peaceful resolution of conflicts. There are several ways in which they share their means for achieving the mission, and the next section explores those strategies.

### **Informally Sharing “Best Practices” Leads to Local Growth**

Yeah, I did switch over time. And that's just been kind of my - I don't know if I've just got away with it and it snowballed, you know, but - but my ideas [come from] people that come in and, “We're going to do this, this and this,” and I'm going, “Man! That's a good idea!” you know. And so because I've been exposed to so many different scenarios and - and things that are working and the way people worked out, I've drawn from them cause a lot of times I'll say, “Well, let me tell you this. I mediated one time and there were three kids and...this is what they did. You know, that's a good idea.”

Janelle, CRC volunteer mediator describing her learning style

CRC members acknowledged that they do not have to attend professional conferences to learn new strategies and improve their practice to better serve clients. They merely have to pay attention to others and not be afraid to engage in conversations, ask questions, and seek feedback. Other members stay current on mediation trends and techniques by reading various professional websites and conflict management literature.

This section highlights the informal and effective ways in which mediators shared their repertoires and knowledge with one another, thereby growing their individual practice and helping the CRC's reputation flourish.

In the opening quote, Janelle was responding to how she learns new ideas that contribute to her effectiveness as a mediator. She became visibly excited while talking, sitting up in her chair with a big smile on her face. She clearly enjoyed learning from others and sharing her experiences with them. Two pieces of information can be gleaned from her comment. First, Janelle learns from observing other mediators. When she watches other mediators conduct their own practices, she still picks up on good "ideas" because she is "exposed to so many different scenarios." Second, she talks with other people to garner and give advice. In the conversations, there is an underlying theme of reciprocity in that each mediator should be willing to share valuable information. Janelle is willing to talk about her experiences but expects people to share their scenarios in return. Fredrick's comment parallels what Janelle said:

Well, I think [sharing knowledge] is an excellent idea and the answer suggests itself from the question, of scheduling informal meetings with mediators to discuss, you know, things that they've run across and solutions that have worked and probably - you know, tell war stories in an environment where it wasn't a matter of violating confidentiality, but of learning from each other's experiences.

Many of the mediators made comments similar to Fredrick's about the need for more *informal* meeting opportunities. However, the flipside of this optimistic talk is getting volunteers to commit more time to developing a skill that they are not being financially

remunerated for. This is a clear challenge for the CRC staff. Joe, the CRC executive director, said that “it is difficult to persuade over 20 busy volunteers, who aren’t getting paid and aren’t required to be anywhere, to commit to informal meetings.” His quote is directly tied to the organizational structure of the CRC, because people are motivated to engage a noble practice but not always motivated to continually try to improve that practice. Self-improvement is very time and brain-consuming. Joe also noted that not everyone learns best from talking with others, saying,

Do we learn more from them by talking to them? I don’t have a tendency to do that. I learn more from observing them and seeing how they do things. I’ve picked up tidbits every day. Even today I still pick them up as I sit with some of the other mediators during different - an example, Theresa did a CPS case and I sat with her on that. And the way she opened it up was fabulous.

Joe recognizes that people have different learning styles, so he tries to provide people with a number of ways to improve their mediation practice and share repertoires. Like in gardening, plants need different amounts of sun, shade, soil, and water for them to grow to their potential. Because of the diversity associated with learning styles, there is no magic formula for achieving an optimal learning environment, and those in leadership often take an intuitive approach to feeling out what the CRC members want and providing options. One small service that Joe performs is being physically present at the CRC when new mediators are conducting their first few mediations. He acts as a “sounding board for any questions they might have,” and he has been able to offer “several suggestions” that helped lead to settlements.

Another difficult element in trying to grow individual practices and maintain the CRC's reputation is pairing up experienced mediators with new mediators during co-mediations. Scheduling is a strenuous activity for Valerie, the administrative assistant. She must strike a balance between keeping all the mediators involved enough to maintain effective practices without running the risk of burning them out. In other words, she needs to find the right amount of sun (i.e., active involvement) and shade (i.e., time off). As the CRC continues to grow, it will provide new mediators with more opportunities to speak with more experienced ones, but it will also decrease the number of opportunities for each person to mediate alone. Thus, if the CRC continues to expand rapidly—both in case load and the number of mediators—they may have to switch to a co-mediation model as the norm. Co-mediation, as a form of mutual engagement, is the only way that mediators can directly observe others.

Whether the CRC numbers continue to increase or they remain steady, it is necessary to keep the local soil fresh. Soil acts as the foundation that breathes life into the local roots that inhabit it. Wenger (1998) uses the term *locality* to describe the symbols that group members use to mark off their boundaries and define group roots in a community of practice. Both at the CRC and within the field of mediation, this locality includes conducting mediations, discussions of neutrality, sharing “war stories” with other mediators, and the active and ongoing reflection on effective and ineffective mediation practices. Joe mentioned that the professional conferences provide an opportunity to learn from people and areas outside of your locality, potentially breaking old habits and fertilizing the soil with additional nutrients. He said,

[The conferences] are very good because sometimes they'll get panel discussions going on, which are a lot like our roundtable, but now you're getting it from not just your locality but from all over Texas, you know, they come and talk about different issues. I think...it's interesting because different parts of Texas really have some different issues. I'm noticing - in the last director's meeting we had here, folks were talking more about credit card mediations and we've only had maybe one or two and I've got some folks that are reporting that they're getting 30 and 40 of them a month.

Joe realizes that to maintain a quality service within the community, he must educate his mediators to be prepared for all kinds of cases. The professional conferences are one venue to move beyond the comfortable practices that mediators have developed within one locality and begin to build a network between several different localities. Although the conference presentations are a formal mode of learning, most of the mediators said they take more away from "hallway talk" with other mediators.

A final way in which mediation practices develop involves limited interaction with others. In the gardening world, *self-seeding* refers to plants that drop their own seeds that then grow into separate full-grown plants, and in mediation this refers to people who read mediation literature on their own to grow their practice. Cynthia disclosed that because she is so busy with her career, she does not have time to attend the conferences or roundtables, so she reads about mediation trends online and in academic journals. She did concede, however, that few mediators would learn best using this method, but she is able to because it is in line with her academic profession.

Overall, many of the mediators said they learn the most from simply sharing ideas, or repertoires and stories, with other mediators. Co-mediation is another excellent way to learn, but there are not as many opportunities for this for two reasons. First, some mediators do not like to co-mediate, because they feel they cannot “control the process as effectively.” Second, as it is currently practiced, the CRC only uses co-mediation as a socialization strategy for new mediators. Once someone is able to mediate alone, co-mediation is not used. The informal conversations and co-mediations help create an excess or surplus of repertoires for future situations, which can be called upon when needed. This is similar to a bulb flower that has underground storage for additional nutrients.

***Not Negotiating Joint Enterprise Provides Consistent Soil***

*“We have to accomplish two things in mediation. Serve the clients by helping them solve conflicts. And do so in an impartial manner.”*

Joe, CRC executive director discussing the structure of mediation

*“I think the process should be the same regardless of the issues being disputed.”*

Judge Robert, Smithton judge discussing mediation differences

The community of practice literature highlights three communicative processes that Wenger (1998) says constitute a community of practice: mutual engagement, shared repertoires, and negotiating a joint enterprise. The previous section discussed ways in which mediators share their repertoires (e.g., conversations) and mutually engage their practice (e.g., co-mediations). However, mediators do not have the option to negotiate

their joint enterprise. That is, CRC mediators must work within the structure they learn during training. They do not have much room to vacillate from this structure, although they can construct the process in different sequences. This section illustrates the structure that forms the enterprise, or business, of what mediators do.

The first quote of this section suggests that impartiality is the most important principle to remember when mediating, and this was verified by nearly every mediator, attorney, and judge that I spoke with. “Being fair to both sides,” “remaining neutral,” and “exhibiting an impartial attitude” were common ways of expressing this idea. The second quote, coming from a judge who sends his cases to mediation quite often, says that this structure should not fluctuate from situation to situation. It is important to remain neutral at all times. Although mediators have flexibility during mediation, often drawing from several different repertoires to help build common ground, this flexibility is contained within an overall structure of neutrality. Mediators must walk a fine line between “building relationships” or trust with the disputants, and acting in a “professional manner,” as Susan put it. To act professionally, one must take into account business and social relations by striving to remain neutral and rational while also creating trust, respect, and rapport.

The CRC is guided by a very noble social mission, “To peacefully facilitate the resolution of conflicts,” but there is also a less altruistic component involved. Joe explains,

[We’re] in the business of resolving disputes that could lead to other - more violent issues. It is - to me, it’s a business. You have to run it like a business.



When you say the term ‘non-profit,’ people get, ‘Oh, you must be some kind of a social organization.’ We aren’t, really. All ‘non-profit’ means is that we are priced so low, that we don’t make money at it, but it’s a business. I mean, and I think some of your private mediators are doing the same thing we’re doing on a more expensive scale. It’s a business to them, too. I mean, it does, in my way of thinking, help society, help the community, but it’s a business.

This is a very interesting response to the question, “How would you describe the CRC?” Joe felt that it was a business. Later in the interview, he conceded that it “feels” more like an informal “community” because participants all get along so well, but he said that without the business aspect, the CRC would “cease to exist.” His last sentence reveals the institutional discourse suggesting that businesses cannot or do not help people; businesses are not “social organizations” designed to improve communities and enshrine social justice. Businesses are tools of capital accumulation and sites of employment. Interestingly, Joe later said his goal is for the CRC to be viewed “as a community *resource* rather than simply an *alternative* to the courts.” This contradiction is illustrative of the difficulty and ambiguity associated with running a non-profit organization in a for-profit economic system. There will always be a bottom line and securing funding is essential to providing services. Although he said “we do not make money,” the CRC actually did make money in its last fiscal year. Thus, the business aspect of the CRC is doing well.

To maintain the business aspect and a stellar community reputation, the CRC must produce results, namely, reaching final or partial agreements. The CRC is in the

business of “solving conflicts” in an “impartial manner,” and if mediators are unable to suppress their bias, fewer conflicts would be resolved. In short, as an organization, the CRC expects mediators to always strive to create the *perception* of neutrality. At the Conflict Resolution Center Director’s Meeting that I attended, one of the other directors said mediation is all about “perception, neutrality, and credibility...and without one, you don’t have the other two.” In other words, mediation will continue to be successful as long as the disputants perceive the mediator to be neutral, thereby enhancing the credibility of mediation as a legitimate form of conflict management and the reputation of individual centers.

Another reason mediators do not have much leeway to negotiate their joint enterprise has to do with the other professionals involved: judges and attorneys. Legal professionals have very clear expectations for mediators. A compilation of comments from attorneys and judges reveals their expectations of effective mediators: “I just want someone who is fair and can sit and listen to both sides, the financial or business issues, as well as the emotional baggage;” “they cannot give up, even when it looks like an impasse, they must keep going;” “they must allow parties to freely express their positions;” and “[they should be] interested in achieving an outcome, passionate, work hard, doesn’t want to lose, wants the mediation to succeed, but doesn’t cross the barrier of overreaching.” The final quote, given by Judge Donald, illustrates the outcome-oriented expectation that judges desire. Mediators should be solving problems to “reduce court dockets,” “save taxpayers money,” and “help those that really need a day in court get it sooner,” as Judge Robert stated. Further, Judge Donald’s quote relies on the

competitive discourse that frames the legal field when he states that mediators should not “want to lose.” What would they be losing? They do not have an active stake in the conflict. This reveals the struggle between collaborative and competitive discourses, the former being attributable to mediation training and the latter to legal training. The final section of this chapter specifically addresses these discourses.

Not only do these expectations form a structure for the mediators to work within, but there are consequences tied to violating them. Although the consequences may seem minor, they can result in a ban from mediating at the CRC. For instance, the attorneys and disputants fill out “report cards” that evaluate the mediators at the end of the session. The CRC staff reads over these cards and provides the feedback to the mediators. Both from my field conversations and in-depth interviews, several attorneys and mediators expressed frustration about the practices of one particular mediator. In the end, the CRC stopped inviting this person to mediate because it was hurting the center’s reputation. One mediator summarized this situation, saying, “One bad apple was spoiling the whole barrel.” In short, mediators have a wide range of flexibility within the mediation as long as they remain neutral and receive acceptable evaluations. If they violate the neutrality norm, the executive director gives them an “off record phone call” telling them to shape up. In other cases, perhaps due mainly to personality differences, attorneys and mediators will request not to work with each other. The expectations of the mediator to work within the neutrality norm, and the potential sanctions that result from not doing so, represent the only real form of sanctioning that exists at the CRC. It is difficult to

reprimand or fire people who are freely giving their time to help others solve their problems.

In summary, CRC mediators do share repertoires and are mutually engaged in learning about the process of mediation. However, they do not get to fully negotiate the enterprise (i.e., business) in the community of practice. They have flexibility to rely on a variety of interpretive repertoires, as long as those repertoires remain within the neutrality norm. Legal professionals' expectations are tied to the neutrality norm, and violations of these expectations result in consequences for the CRC members. The discourse in this section revealed that the CRC is both a business and a community service, and it takes a great deal of balancing to maintain both of these functions. In addition to informal conversations and co-mediations, mediators mutually engage each other through professional and organizational gatherings, which is the next section.

### **Growing a Community Garden**

My - my guidance to her was to take the attorneys out into the kitchen out here, "Explain your concern and make your suggestion that they - the child see a psychologist before you proceed." She did. They did. And it worked out well. So, I mean, that's some of the stuff that you can share by talking about, "This has been my experience, what I would have done" or "what I have done," you know, and that's where [the] roundtable comes into effect.

Joe, CRC executive director talking about the importance of roundtables

Roundtables are voluntary, quarterly organizational meetings where the CRC mediators can attend to learn about mediation. They are anchored around a guest speaker

and provide ample time to share mediation experiences on a more formal level than “hallway talk.” The speaker will bring up a real or hypothetical situation and then ask the audience how they would respond. In addition to the CRC roundtables, the mediation field offers several professional gatherings that accomplish a similar purpose. This section discusses how these formal mediation events help mediators share repertoires and grow the mediation field across state lines. As Judge Donald says, “Mediation is still a baby...it has only really been around for 30 years or so...and it is not a profession because the state hasn’t licensed it yet.” These formal mediation events create opportunities for exchanging repertoires and suggestions for building the legitimacy of the field.

Joe’s opening comment is a clear indication of how the roundtables function. They allow mediators to share repertoires. In the gardening realm, there is a term called *grafting*, which is the process of splicing two or more plants together to create a new one. The goal is to extract the desirable characteristics from each original plant into the new plant. This same process occurs at the roundtables and conferences. People are exposed to the different repertoires and strategies (e.g., humor, introductory statements, questioning, stories, analogies, and props) and are able to extract the ones that resonate with their own repertoires. Thus, reflective mediators—who make up the majority of the people who attend these functions—have the opportunity to continually refine and update their practice. These hybrid mediation styles are similar to hybrid plants bred together through the grafting process. Both of these processes occur on a trial and error basis; some strategies will work for some people, just as some plant characteristics graft

well and others do not. Susan said that the roundtables and conferences help “mediators develop a sense of professionalism and help establish mediation as a profession.” This is tied to Iverson and McPhee’s (2008) notion that COPs are about sharing knowledge in social settings to develop an interactive practice and create a web of community relations. The sharing of knowledge will lead to a professional practice and the web of relations will lead to a legitimate profession.

An additional benefit of these formal mediation events is that they encourage the mediation community to identify its habits and customs. A plant’s *habit* is the direction that it tends to grow, which is typically toward sources of light and water. Benjamin (2009) argues that many mediators develop a stock of habits that constrain their creativity. He preaches that people should mediate all types of issues to break bad habits and grow their practice in new and unforeseen ways. He says that feeling *uncomfortable* is admirable, because that is part of what keeps mediators sharp. His recommendation is an alternative to the mainstream discourse of trying to cultivate a mediation specialization such as elder care, family law, credit card disputes, or insurance claims. Basically, Benjamin advocates mediating everything under the sun to increase the chances of creating successful hybrids.

A large portion of professional mediation gatherings such as conferences and continuing education workshops deal with the marketing of one’s practice. Marketing functions as the *miracle grow* of the mediation field. Even though mediation has been around for 30 years in Western society, it is still “underwhelmingly used” (Benjamin, 2009, 2010). Websites, gimmicks, slogans, and materials have been created to improve

the marketability of individuals businesses, CRCs, and the field as a whole. For example, much of the focus at the conference I attended dealt with leveraging emerging social networking technology to grow your practice. 12 of the 33 presentations dealt specifically with growing your practice or learning a new skill that would make you more marketable. A few of the presentation titles are as follows: (a) *Get publicity now: How to grow your mediation practice with social and traditional media*; (b) *Conflict coaching: Bring out the coach in you*; (c) *How to build your mediation practice*; and (d) *We are all online mediators*. This theme of the conference harkens back to the volunteer repertoire, specifically the public-private dualism that is reified when talking about volunteers and paid mediators. All of these sessions were geared to private mediators who charge for their services. Only one session discussed volunteer mediation, and that was a presentation entitled, *Establishing a community dispute resolution program*, a task in which no single mediator could accomplish. In short, the professional conferences provide an opportunity to learn from other mediators in both formal and informal situations. Although a large portion of these conferences are geared toward private mediators, volunteer mediators still attend and learn from others.

### **Cultivating a Garden of Knowledge**

As in education, mediators might not realize the effects they have on people or situations in the immediate moment, for better or for worse. We can hope that we are planting seeds that will bloom in the future if they don't take root during the mediation by showing disputants that communication is possible. Although the CRC has been an official organization for over ten years, it constitutes a budding (e.g., nascent)

community of practice rather than a well established one for several reasons. First, the struggle of running a nonprofit organization in a for-profit environment requires the flexibility to move back and forth between both visions: making money and providing a social service. Second, time management is a constant struggle because you are dealing with volunteers. They are not always easily motivated to donate more time and it can be awkward to sanction them for improper practices. Third, mediators mostly engage the process individually. Fourth, they do not have the ability to negotiate their joint enterprise, because they must operate within the norm of neutrality. Finally, the CRC is made up of a small number of employees, but the center itself is connected to a larger discourse that guides mediation practices across a variety of states. By its very nature, then, the CRC is a community of practice rather than a traditional organizational form.

There are a variety of ways that the CRC mediators assemble various repertoires into a COP. First, they graft individual practices into interesting hybrid repertoires at professional gatherings, organizational meetings, and following co-mediations. Second, they identify their effective and ineffective habits and add new resources to help cultivate more effective strategies. Third, when necessary, the CRC staff will *pinch back* ineffective behaviors, which is the process of pointing out and plucking off bad habits so that new habits will take their place. Fourth, the CRC nurtures the *taproot*—the central discourse (i.e., root) tying all the other repertoires together—the institutional norm of neutrality. As long as this taproot is healthy, legal professionals and the public should perceive the process as credible. Finally, a select few mediators will self-seed, or seek out educational materials to learn on their own. When these strategies are combined, it



should lead to a *hardy* mediation practice. Much like hardy plants that can flourish in a number of climates, a hardy practice is flexible enough to adapt to new situations and structured enough to keep the process moving. However, weeds and other environmental problems can emerge that affect the growth of a garden. The next section dissects one such environmental factor in mediation settings: the power implications of interpretive repertoires in regard to the attorney-mediator relationship.

### **Working the Process and Setting the Environment**

*“Ok. It’s time to do a little attorney bashing. Attorneys, you need to take off your attorney-hats for this training. Really, it is a different way of thinking and a different role.”*

Jack, CRC mediator pointing out the different roles of attorneys and mediators

*“A huge problem is that the legal field is not set up for dialogue.”*

Alison, Attorney commenting on a deficiency of the legal field

I think it’s very important not to criticize or be seen as criticizing an attorney in front of his or her client. You know, it’s a professional courtesy, particularly if it’s a factual matter. Most particularly, you know, if the - there may be a misstatement of the law. You know, I want to carefully avoid appearing to criticize the attorney by, you know, having a side bar discussion.

Fredrick, CRC Director discussing how he manages attorney/mediator

The way humans solve problems and make decisions is not an easy process to explain. These skills are acquired from a variety of sources over an extended period of time and can remain stable throughout one's life or go through continuous changes and refinement. Mediation is an interesting social situation because there are several parties involved who often exhibit vastly different opinions about the most effective way to make decisions and solve problems. For instance, any given mediation may include professionals trained to evaluate, diagnose, and solve problems (e.g., attorneys), individuals trained to approach problems from a collaborative, democratic standpoint (e.g., mediators), and at least two people who just want to emerge with their integrity intact, or better yet, with the other person's integrity destroyed! To further complicate the mediation balancing act, each of these individuals has a unique set of personal values, personality traits, and cultural understandings of the world. Unfortunately, these innate qualities are not checked at the door as they enter the Conflict Resolution Center.

The opening quote of this section aptly captures the elephant in the mediation room: the ambiguous and contested relationship between attorneys and mediators. Jack was emphasizing on the first day of the CRC mediation training that attorneys need to suspend their competitive, evaluative, and oppositional mindset in order to learn the mediation mentality. The public understands that attorneys are trained as competitive advocates; however, far fewer people understand a mediator's collaborative training. Further, many attorneys and disputants position mediators within the dominant legal discourse and misconstrue their roles. Legal discourse often frames understandings of the mediation process, which is why the second quote describes how mediators have to

tiptoe around certain issues to preserve the authority of the attorneys, even if they make a “misstatement of the law.” This comment is particularly insightful because Fredrick spent the first half of his career as an attorney, so he was able to discuss and appreciate mediation from both professional perspectives. As he suggests, even when attorneys do their jobs incorrectly, mediators are taught to safeguard the attorneys’ professional knowledge and protect the mediation process by pointing out their errors in private.

This section explores the power dynamics involved in community mediation and describes how mediators use interpretive repertoires and discursive strategies to manage these fluctuating relations. Because the focus of this dissertation is on the use of discourse, this section spotlights the relationship between the mediators and the attorneys, including the different discourses that shape their understanding of mediation. Data from this section primarily emerged from my in-depth interviews, ethnographic conversations, and extended notes from the CRC training sessions.

Before describing the power implications of the community mediation process, it is necessary to first define my use of the term *power* within this project. Clegg, Courpasson, and Phillips (2006) said that power is a relationship between things and people who are trying to secure meanings in an ambiguous world. This relational notion of power is appropriate for this project for several reasons. First, the disputants are each trying to have their view of the situation accepted as the “truth.” Second, the attorneys and disputants constantly try to create a favorable relationship with the mediator. They want to have the mediator see the conflict from their side’s perspective. Third, the mediators and attorneys rely on overlapping but not identical discourses to frame and

control the process. Overall, the more equivocal (Weick, 1976, 2001) the environment, the more individuals struggle to define it from their position, perspective, or worldview. Powerful social actors control equivocal situations by persuading or forcing other participants to achieve the powerful person's goals. This *control* is exerted in spite of obstacles.

In summary, I discuss power as (a) control of the relational and procedural levels of mediation and as (b) the Foucauldian (1980, 2000) notion of power as knowledge. I try to make these conceptual shifts as transparent as possible. Social actors use discourses to gain legitimacy and build credibility (Heracleous, 2006), and the following three sections demonstrate how mediators and attorneys interpreted and responded to each other's actions to accomplish these goals. The first section highlights the pervasive legal discourse that is often integrated into the four interpretive repertoires used by the mediators. The second section then illustrates how the mediators and attorneys struggle to define each other's role relying on their discursive resources, and the final section shows how procedural and relational control is at the heart of mediation.

### **The Equivocal and Omnipresent Legal Discourse**

*"Lawyer [mediators] have the reputation of getting agreements because of the law."*

Jack, volunteer mediator commenting on how legal mediators get agreements

[Mediators] should be familiar with the legal language, you know, the important concepts like different types of conservatorship and child visitation scheduling,

you know, first, third, and fifth weekends...but you should never provide legal advice or counsel. That is why we have lawyers.

Judge Robert discussing the relationship of mediators and the law

As the above quotes suggest, no matter how much mediation has been accepted as a legitimate and alternate form of mainstream conflict resolution, it is still closely tied to the legal system. In fact, few mediators make a living off their mediation practice alone without first building a strong network of legal professionals. Even when individuals struggle to position the legitimacy of mediation in the foreground of a conversation, the legal system will always serve as the background. Regardless of what mediators do or say during mediation, there is no separating it from legal discourse. As this project has already pointed out, there are some differences between the approach, goals, and strategies of volunteer and private mediators. There are also important differences between legal mediators (e.g., attorneys and judges) and non-legal mediators. Many non-legal mediators adhere to the disposition expressed in Jack's opening quote.

They believe that legal mediators are too evaluative and rely on their knowledge of the law and position as an authority figure to force settlements on people. However, mediators must figure out for themselves how to negotiate the legal discourse, as the second quote suggests. As Judge Robert states, mediators "should be familiar with legal language," and at times it is acceptable to use it to move the process forward, but a mediator must never provide "legal advice or counsel." Thus, the legal discourse is a large part of the mediation process and mediators must self-determine how to ethically interact with (and perhaps within) that powerful structure. This section demonstrates the

interwoven nature of legal and mediation discourses and how these overlapping structures lead to conflicting advice and equivocal environments (Weick, 1976, 2001). It explores specific practices that give teeth to Foucault's (1980, 2000) theoretical explanation of the power-knowledge nexus.

The mediation field is composed of a wide variety of professionals and professional background can influence a mediator's approach. As Jack's quote suggests, legal mediators use their legal knowledge to obtain agreements. He continued,

I do know that some of the former judges, that's how they get their agreements. They really tell the parties, "If you go to court, this is what's going to happen to you. I know it is because I was a judge. That's what the law is." That's not a good outcome.

The preceding scenario is what mediators call *forcing agreements*. I asked my participants whether or not mediators should ever force agreements, and the response was a resounding *no*. A comment from Judge Thompson summarized the participants' feelings about forced agreements,

I would much rather that they sort of flesh out the - the issues and not come to an agreement, rather than come to some sort of an agreement that's going to continue to rear its head over and over again because it was sort of a forced issue.

Although forcing agreements is never an acceptable mediation strategy, it can occur when legal mediators rely on legal discourse and relationships as part of their legal repertoire. In these cases, legal mediators use their knowledge of the law and their

relationship to other legal professionals to offer suggestions as to what the probable outcome would be in court. This is evident when Judge Lake said,

At the CRC, the parties never know which mediator they are going to get, so [an agreement] depends on the quality of the mediator that is assigned to the case.

The fee based mediators, the attorneys, usually know the mediator [because] they're usually attorneys too.

Legal mediators most likely have ongoing relationships with the attorneys, meaning they do not have to strive as hard to build trust because it is built into the recommendation of using a particular mediator. When legal mediators are using friends or acquaintances to mediate their cases, there could be a tendency to rely on past judicial rulings to achieve settlements. Theresa, an attorney mediator who chose to focus solely on mediation, said she likes to let agreements “be driven by the parties themselves rather than forcing something to settlement....you don't need a lawyer driving something like a freight train to a conclusion, and you don't, that's not the job for the mediator either.” Theresa has not only reached the highest level of recognition according to the State Mediation Credentialing Association—that of distinguished mediator—but she is also certified in family law. She has a commanding grasp of legal and mediation discourses, which makes her comment even more interesting. She sounds more like a non-legal mediator than a very experienced and respected legal mediator. Theresa argued, however, that mediators should use legal vocabulary to increase their credibility. She said,

I don't know anything about real property law. I've never had a real estate practice. I don't practice personal injury, but I think you develop a vocabulary

over time that helps you convey to them that you know the issues and know how to approach resolving them.

It is thus necessary to build a familiarity with legal language and protocol, because this increases the mediator's credibility and expertise; however, it is not acceptable to force settlements using legal vocabulary. Forced cases will keep "showing up in court," according to Judge Thompson, because people need to get all of their issues off their chest in mediation. According to the CRC training, cases that settle too quickly might not provide time for those issues to emerge. Table 6 demonstrates how the legal discourse was integrated into each of the four repertoires analyzed earlier in the chapter. Although the argument could be made that legal discourse was its own repertoire, I did not see it that way for several reasons. First, the intermingling of these discourses reveals the messy, complex, and mutually related nature of different repertoires. Second, mediators are trained not to offer legal opinions but to use legal language as a resource when needed. It appeared to be more the case of living in the legal language, and when the mixed discursive resources were enacted, they were always tied to one of the other four repertoires. Finally, the other four repertoires can stand on their own, whereas mediators are forbidden from providing legal advice or counsel.

In summary, the legal discourse framed people's understanding of mediation, but competent mediators were able to integrate this knowledge into their other repertoires. The management of interpretive repertoires within the omnipresent legal framework is a skill that the most effective mediators exhibited and is only obtained through experience.



Mastering the relationship between their interpretive repertoires and acquiring a functional legal vocabulary represents Foucault's power-knowledge nexus. Through

Table 6: Infusion of Legal Discourse into Repertoires

<b>Interpretive Repertoires</b>	<b>Examples of Integrated Legal Discourse</b>
<i>Cultural Competence</i>	<ul style="list-style-type: none"> <li>• “The law doesn’t differentiate between men and women or different ethnicities...it is what it is, for everyone”</li> </ul>
<i>Volunteer Pride</i>	<ul style="list-style-type: none"> <li>• “Heck, even some of the <i>volunteers</i> seem to know as much law as the court appointed attorneys”</li> <li>• “Just because I am a volunteer does not mean I don’t know the law...this isn’t my first mediation”</li> </ul>
<i>Parenting Norms</i>	<ul style="list-style-type: none"> <li>• “The law presumes that people know what’s best for their children, [but] they often have no clue of how reality works”</li> <li>• “Look, I’m a parent too, and I’ve done a lot of these mediations, and I have never seen a couple do what you are describing. Is that even legal?”</li> </ul>
<i>Business Professional(ism)</i>	<ul style="list-style-type: none"> <li>• “Lawyers can help in terms of helping people realize that, ‘This is not just another step of something I have to do’”</li> </ul>
	<ul style="list-style-type: none"> <li>• “I kicked out [an attorney] one time...he kept butting in and I said, ‘You know what? You’re just here to give her advice - legal advice if she needs it, so go outside and then if she needs you, we’ll go get you.’”</li> </ul>

increased knowledge, represented in this case by understanding legal language, mediators can earn more power and legitimacy. Trying to discuss the law without

providing advice is difficult to achieve for many mediators, but as long as the mediator involved the attorneys the process usually continued in an orderly fashion. From my observations and conversations, less skilled mediators tend to freeze up in these equivocal environments, which is one reason why co-mediating is such a powerful socialization tool. As my analysis has revealed, some mediators try to force settlements by relying on their legal knowledge but this is usually confined to legal mediators taking on cases for professional acquaintances, due to the financial and relational incentive to produce results. Developing a legal vocabulary was an effective strategy for non-legal mediators to enhance their credibility with the attorneys and disputants. The next section examines in further detail how the attorneys and mediators struggled to define their roles.

### **Role Ambiguity**

First of all, I have no doubt that there are talented, non-lawyer mediators. I've read some of the material that they put out through the Texas Association of Mediators. They talk about the successes they've had. I believe them and I see it firsthand with the people that we use as volunteer mediators down at the dispute center. Now having said that, there are some cases that get to be technical enough that the mediator is kind of like a sea anchor. If you don't know what a sea anchor is, I'll tell you from my Navy experience. A sea anchor is an object...that's thrown over the side of a ship and it slows down the drift of the ship by creating a drag in the water. If in the mediation process, the lawyers and

their clients are the ship, the mediator who doesn't understand anything about the legal framework of the problem can be a sea anchor.

Judge Donald discussing different types of mediators

The heart of any effective mediation should be a collaborative mentality. Many attorneys that use the CRC bring a spirit of collaboration to the center and teach their clients the differences between the court and mediation. However, there are attorneys who do not want to shift from their competitive attorney role and continue to advocate for their client and try to prove their case in mediation—which is not the appropriate venue for those actions. It can be difficult for the mediator to build common ground if the parties view the mediator as an “anchor” slowing down the process. Although the judge did qualify his statement by suggesting that non-legal mediators are very effective for CRC cases that do not involve complex legal issues, other attorneys echoed his sentiments even in the straightforward cases with few technical legal issues. This section highlights how mediators and attorneys struggle to define the purpose and goals of mediation as the process unfolds by demonstrating the discursive combat that often transpires involving collaborative and competitive roles within mediation.

As stated in previous sections, it is very important for the mediator to understand the legal vocabulary involved in a case, because a mediator would never want to be viewed as an anchor in Judge Donald's use of the term. However, to extend his metaphor, anchors do have positive qualities as well. For instance, they ensure that ships do not drift aimlessly at sea, they keep ships tied to a specific location or course of action, and they help prevent colliding into other objects. Therefore, in addition to

slowing the mediation process down, anchors also serve as a safety valve that thwarts unwanted, unproductive conflict. One way to avoid this type of conflict is to fulfill the anchor's function and pull everyone together to ensure that everyone is on the same page. A mediator never wants to appear to impede the process. Susan said,

As soon as you make [attorneys or disputants] defensive, you - you've either lost it or you've got to go a long way to get back what you had. And I especially don't want to make an attorney defensive. I want to create an atmosphere where they're willing to cooperate also.

The last part of Susan's comment reveals that attorneys are not always cooperative. The non-cooperative mentality is a direct result of their legal training. This is one reason why attorneys and mediators disagree about how to define the situation. Valerie, the CRC case manager, said,

There's a few that are not going to [have respect for our mediators], but those attorneys are the ones that don't have faith in mediations and don't want to be here anyway. They'd rather take their clients to court. That's where they feel more comfortable and that's where they are trained to end up.

One reason that attorneys prefer to end up in court is that they understand court procedures better than the mediation process. They understand pre-trial discovery, depositions, cross examination, and opening and closing statements. As Judge Donald said,

[Attorneys] are always afraid of sharing information with each other because they think it can be used to their disadvantage later...They're compelled by some

rules of pre-trial discovery to give up certain information on request, but if it's not requested, they don't typically volunteer it unless it's very helpful to them.

It is clear that attorneys who are fearful of sharing information would impede the mediation process, acting themselves as anchors that prevent forward progress. Fear and uncertainty about the process can prevent agreements from occurring and force clients to go to court. One way to avoid this is for the mediator to highlight the roles and rules in the beginning of mediation. For instance, Jack said,

I have started doing something with the - with the lawyers, doing something that I - I think takes some teeth out of the lawyers. I tell the people what their lawyers ought to be doing. I compliment them on having lawyers. Even some of the lawyers that I don't particularly like, I compliment the lawyer. I tell the people, "You're - it is not necessary to be represented by an attorney, but you have selected one and I really agree with that, folks. I really think it's the thing to do. Now let me tell you what the - let me tell you the lawyer's position here. I've told you my position. I've told you your position. You're the - this is your mediation. You're the ones to make the decision. Your lawyers are here to give you advice, not to help you make the decision because that's yours, but the lawyers are here to - to answer questions, "What if we did this? What if we did that?" Because you can make a decision that doesn't follow the law.

Jack's comment demonstrates the significance of making the role shifts transparent and the fact that mediation agreements do not have to follow the legal guidelines. In other words, just because "an agreement is not covered in the Texas Family Law Code doesn't

mean you can't agree to it," as one mediator said. Further, many people *want* their attorneys to make all their decisions for them, which is a very disempowering mind frame for the disputants but a very empowering one for attorneys. Mediation is supposed to empower people by reminding them that they are in control, and that when this conflict is over, neither the attorney nor the mediator will be around to provide advice.

To capture this idea, Valerie said,

Being able to - to tell them - or empower them that - that they can be in control of their lives. You know, so many people, I think a lot of times people who come here, they think, "Well, everything is black and white or everything is straight up and down. There's no bend here or there." It's like the big old oak tree that doesn't want to bend. But when they - when they see that they actually have power to - to help loosen things up and not be so stringent and to be able to really achieve something on their own, I think that - that just gives them a whole new lease on life because a lot of them - let's just say if it's just a divorce situation, that they're going through the court system, they feel like everybody's telling them what to do and they don't recognize that they actually have the power to tell themselves what to do, and when they come to mediation, I think the majority of them realize, "Hey, you know, I can do this and I'm in control."

Successful mediators remind the parties that they have the power to make decisions that will affect their lives and their children's lives. The following four discursive examples demonstrate how different mediators accomplish the dual goals of clearly defining

attorney roles and empowering the disputants. Elizabeth, a well-regarded mediator and trainer, said,

I'm not saying [attorneys] back off in a real complacent, gentle way, [because] that's not what they're charged to do, but I have found even some of the most cantankerous attorneys to work with you, but you have to be really assertive and you have to be really confident in your skill set. I think I was a reasonable mediator early on, I think I'm a far better mediator now because of two things, and I don't mean an arrogant way of establishing the environment and working the process, but it's what I stress when I train people. You remember that and you let everybody know what their roles are and you let the parties know this is their mediation.

Elizabeth recognized that her practice and assertiveness improved over time as she dealt with different attorneys and witnessed different cases. She focuses on two key components, working the process and setting the environment, and both of these aspects have to do with control. Tabatha tried to control the process by pointing out the financial consequences of not working collaboratively in mediation. She said,

I'll say, "Your attorneys are expensive and I want to work with you. You know, this is costing you money. Your attorney's costing you money. But if you can work through this and we can work - and it will be hard." And I'll tell them up front, "It's going to be hard. It's not going to be easy. It's going to be hard. But if you can work through this, you're saving money on your attorneys. You're able to get on with your life. And all that money that you're spending for all this

stuff, you can use that to get on with your life. You can use it for your children.

You can use it for a mini vacation, probably.” And so I tell them up front. And I have nothing against attorneys at all, but...

Tabatha’s last statement could either mean that attorneys want to go to court to make more money or that their competitive, adversarial mentality damages the mediation process. Susan said, “A lot of [attorneys] aren’t really invested in the - the listening and the telling and the venting part. They - they want to get down to the law part of it.”

Mediators point out that defining roles in the process usually occurs proactively. For instance, Cynthia said,

One of the things you’re going to get used to as you do more [mediations] is you’re going to know the lawyers ahead of time...I have three lawyers that they walk in the door and I say, “Can I talk to you for a minute,” and the other lawyer always comes along, and I look at the [first] lawyer and I say, “This is just to remind you, you’re not running this mediation; I am, and you’re not there to talk; your client is. Do we need to go through this in more detail?” “No, ma’am,” eventually. He’s now used to it because he knows I’m going to call him on it. He knows he’s not going to get away with it. But he tested it. He pushed boundaries. And that’s where the calm stays, to be able to look at this guy, who is acting like a two year old in rebellion, or maybe a teenager in rebellion, and be able to calmly say, “Thank you for your input, but I need to hear from [your client].”



Attorneys are getting paid for their time during mediation, and they are hired to act as passionate advocates on their client's behalf in the court room. So when an attorney does not prepare a client for the role switch or does not believe in the mediation process, the adversarial role disrupts the mediation. Mediators like Cynthia address this issue before the mediation in a private attorney caucus, but other mediators address the issues as they arise. Theresa, an attorney mediator, said she handles it this way,

What I expect out of the lawyers, because a lot of times whether it's personal injury case or employment law case, whatever you've got, the lawyers come in with the expectation, too, that their clients want them to be vigorous advocates -- and so I have to reframe their expectations, [I] say, "Look, you know, I'm going to tell your clients when I meet with them the first time that we're here in a different role today. We're going to set aside some of the expectations of making their point; instead, we're going to roll up our sleeves and we're all going to work together." And that's where I kind of bring in the collaborative part.

Theresa understands that there is a collaborative part to mediation but there is also an underlying competitive part as well, because the attorneys are not able to disconnect from their professional training. Oftentimes, the clients do not want them to disconnect from that competitive training. Theresa uses the attorney caucus as a tool to "reframe" the competitive roles and then encourages the attorney to explain this shift to their clients. In short, successful mediators know when to shift roles from the evaluative expert to the curious inquisitor, allow attorneys to portray the role of evaluative expert, and they proactively seek out potential obstacles to the process.

In summary, being able to authoritatively facilitate the mediation process and achieve acceptance of one's interpretation of the situation by the others is a form of control. One goal of struggling to define mediation roles is to eventually build a working relationship with the attorneys, so that there is a mutual level of respect for each other's practices and a hope that they will continue to use mediation in the future. As Jack stated, "I don't talk down to [attorneys]. Of course, I - now I've mediated so many times with some of them, that we have lunch together." Jack has developed credibility with these attorneys, because they recognize his knowledge of the process and his authority to define the roles in a collaborative fashion.

Wulf (1989) developed the idea of a *collaboratory*, which he viewed as a digital community of practice where knowledge and instrumentation are freely shared across academic disciplines. It is an environment in which scientists work and communicate with each other to participate in collaborative science and improve different types of systems. I find this term applicable to what occurs in a successful mediation. An effective mediation session is a artful integration of the following elements: (a) the enactment of mediation training strategies that are invoked at strategic moments to keep the process moving forward, (b) the blending of different knowledge systems between social actors with different levels of expertise and social status, and (c) the intermingling of collaborative and competitive mentalities, discursive strategies, and goals. Both the scientific and mediation collaboratories are successful for counterintuitive reasons. Many scientists want to safeguard their intellectual property by securing their ideas as proprietary information. This necessitates missing out on the potential synergy that

emerges from sharing and combining ideas with other researchers. In other words, a collaboratory can stimulate normal science (Kuhn, 1962) to move in new directions that lead to more intriguing scientific developments for the whole community. In mediation, effective collaboration often emerges from a unique struggle over control. That is, the best way to take control of the process, from a mediator's perspective, is to give away control, or at least create the *perception* of giving it away. This practice is explored in the next section by first discussing the dialectic of control (Giddens, 1984).

### **Dialectic of Control**

A lot of times some of our mediators are in fear of the lawyers because I think this lawyer thing has a higher level of expertise and really they put their pants on the same way you and I do, one leg at a time.

Joe, CRC Director describing why mediators are intimidated of attorneys

*"I think sometimes mediators may feel intimidated by lawyers. Being that I deal with them all the time, to me, they're very human."*

Heidi, CRC volunteer mediator describing her understanding of attorneys

Attorneys can be intimidating figures even to those who are highly educated and successful. There are few careers that are as financially rewarding as a legal career. And although the public's perception of the legal profession has declined recently (Harris Poll, 2007), legal knowledge is still respected in interpersonal and organizational interactions. Although volunteer mediators are not subordinates to attorneys in the sense of a hierarchical employment relationship, they are subordinate in terms of legal

discourse. However, the attorneys are subordinate to the mediators in terms of mediation discourse. Thus, there is an interesting dynamic between these two groups of people, a back-and-forth struggle to not only define their roles but to control the mediation process through their discursive resources. The most effective way for mediators to control the process is to create the perception of giving up control. This section explores the multifarious interactions between attorneys and mediators in trying to maintain control over the mediation process and products (e.g., settlements). It shows the mutually reinforcing nature of viewing power as control and knowledge, illustrating that control and knowledge cannot be separated in a community mediation environment. I first explain my use of the dialectic of control.

To achieve any organizational goal, individuals must give up some personal autonomy (Barnard, 1968). Giddens (1984) extends Barnard's argument and says that power is never fixed because subordinates always have some means to resist, or struggle against, the dominant actors and discursive structures. They have small avenues to act autonomously or with agency. The application of these ideas by organizational communication scholars is usually accomplished by studying the differences between employee and employer ideologies. For instance, Mumby and Stohl (1991) used the dialectic of control perspective to better understand how discourse creates, shapes, and supports a management ideology. Papa, Auwal, and Singhal's (1995) study of the Grameen bank showed how both sides of the dialectic of control are enacted when trying to create social change. The bank was a symbol of social justice—extending credit to impoverished citizens of developing nations—that had to accomplish its mission by

moving back and forth between the control/emancipation dialectic. This was the only way to extend credit to help people achieve increased financial and personal freedom and keep the system fully functioning. Their study embodies the extant dialectic of control research, but this project offers another perspective that involves a unique set of social actors that act autonomously within a loosely coupled and structured organization.

Even within the confines of the mediation process, mediators still have a wide degree of latitude to control the environment to achieve their goals. Elizabeth was discussing the most important thing to remember during mediation and said,

It's the parties' mediation. I absolutely - this is how my skill has grown in the last almost twenty years as a mediator, what I absolutely know, Zach, is the environment is mine to establish and the process to be worked is mine. The mediation is the parties'. And, you know, my sister's an attorney. Some of my dearest friends are attorneys and kind of remind me of *horses*, and I don't mean this disrespectful, but I have seven horses at home and a horse is looking for someone to lead and if you the human don't lead, then the horse is going to work to lead. So in the mediation, if the mediator or the co-mediators are not running the process by saying, "Greg, appreciate your input, [but] it's Zach's mediation," or we caucus and have that conversation, then he's going to take control. I used to do a lot of CPS mediations. One of our Assistant DAs will say, "Okay. Elizabeth, I think we'll discuss this now." [Then I'd say], "It's a great idea, but, no, we're going to discuss this." She'd grin and chuckle, kind of like, "Okay. You know, you're nice in letting me know you're running the show."

This comment is very interesting on several levels. First, Elizabeth admits that attorneys are trained to lead and control social situations, and if a mediator does not fulfill that facilitative role the attorney will. Second, she explicitly states that the process and environment are the responsibility of the mediator to control, but the mediation is for the “parties.” This idea of ownership suggests that mediators should not get caught up in whether the outcomes appear fair, because that is for the parties and their attorneys to determine. Third, this strategy of control has worked for Elizabeth and has improved her practice over the years. Fourth, she says that if mediators do not remind attorneys that it is their client’s mediation, they will “take control.” Alison agreed that mediators should not get “caught up in the emotional atmosphere” but must remain neutral. When asked how a mediator should respond to a disruptive attorney, she said,

Mediators cannot let attorneys take control of the process...If it is an unreasonable attorney, the mediator must take control of the process. Get in their face and take control, “this is my process.” You have to, have to remind them they are there to be, or to serve as an advisor. They should advise their client but not take over the process.

Alison’s comment is very vivid in that she felt mediators could get in an attorney’s face, and this is all the more revealing considering Alison is an attorney! Alison uses the CRC’s services several times per month, so she obviously values and understands the process of mediation. In the case that a mediator has to deal with an obstinate attorney or disputant, Janelle said,

Well, the first thing I'd probably do, like if a disputant [or attorney] became verbally aggressive or something, abusive, I would...make them leave the room. I think just, you know, get them out of there and - where they're not allowed to have that power and control cause that's all it's about.

Mediators recognize that conflict is about power struggles between the two disputants, but they are often less reflective of the power struggles between the attorneys and themselves. Both groups use their discursive knowledge and repertoires to control the process. For instance, Joe was referencing attorneys when he said, "[Mediators] are in control of the process and they are welcome guests." Attorneys are guests that serve a very specific purpose at the CRC, which is to provide legal counsel. Judge Lake said, "If the mediator is not an attorney, the relationship is using - the mediator is using the attorneys for the legal framework." Attorneys play an important role in the mediation process but often will overstep their boundaries if mediators do not control the environment and work the process. When the attorneys try to control the process, there are many ways for re-establishing the environment. Joe said he can tell when an attorney does not want to be part of the collaborative process.

Just their - their body action, their verbal action, you know, they're not willing to sit and discuss. I mean, they'll make comments like, you know, "We don't need to sit here and take this stuff," you know. When that happens, I usually ask them to step out for a minute and talk to them and explain to them quite clearly that this is the client's mediation and if they don't care to be there, that's okay, too,

but not to disrupt the situation. If we don't reach an agreement, then they have their path to go down.

The mediators said that this is a very effective strategy for keeping the mediation process moving forward. In fact, the attorneys all said they want the mediator to take control of the situation, but it seems to be less out of wanting to give up their own control and more out of the fear that the other attorney and disputant would gain control. For instance, Rick, a Smithton attorney who mediates at the CRC several times per month, said,

And sometimes what I see with the mediator is they let the conversation get out of hand and I'm thinking, "Well, wait a minute. I'm not here to argue this case against this person. I just told my guy, 'We're just here to reach an agreement.' Now, he feels compelled or she feels compelled to respond to that anger." And then I could see the mediator cut the conversation off. At that point it might be a little too late because now they're mad at each other. But if from the get-go if that mediator lets that individual know, "Here's what we're going to do" and maintains that, you're going to have a successful mediation... Don't - and do not let the other attorney take charge. Don't let that mediator get bullied by the other attorney saying, "Well, this is what my client wants" and automatically just starts taking charge.

Rick is saying that mediators need to set the conversational parameters. He understands the purpose of mediation and admits that it is not the venue for arguing one's case or proving who is right and wrong, but he does not want the mediation to diminish into a shouting match nor does he want the other attorney to overpower the mediator. This



creates the perception that Rick is not advocating for his client as vigorously as the other attorney. Further, Rick believes that the mediator can be bullied into helping create an unfair agreement.

Another way that mediators control the process is by relying on a procedural technicality that is not available to the attorneys. For instance, Jack described how this works:

Jack: I had one [attorney] who came in and announced to the group that - he said, "I just want you to know, you're not going to be doing all the talking. I know how you people work." Not just to me, but to - he said it to me in front of everybody else.

Zach: Wow! How did you respond?

Jack: I'm not sure - I was so angry, I'm not sure how I responded. No. I told him it was my mediation and that he could either participate or could leave and I would just report to the judge that he didn't participate.

Jack's comment first shows the ambiguous nature of whose mediation it really is.

Previous mediators, including Theresa, Susan, Joe, and Jack, have said that it is the *disputant's* mediation, but Jack now claims it as his own. This shift in ownership of the process occurred because Jack was backed into a corner, and he used this threat to gain back control. Jack also said he would report the actions to the judge. In a court mandated mediation case, which makes up the majority of the CRC cases, the protocol includes reporting to the courts whether or not the case settled and whether or not the parties participated in good faith. If an attorney or disputant is causing too much trouble, the

mediator has the option to call an impasse and report those actions to the judge. This discursive move changes obstinate behaviors very quickly.

Another discursive move that mediators use to gain control in subtle ways is strategic ignorance. Cynthia said “strategic ignorance” is a strategy that allows the parties to come up with their own solutions. Other mediators “disguise statements as questions,” thus providing parties with necessary information or revealing the unintended consequences of a particular decision. Humor also proved to be a popular way for mediators to maintain control of the process without disrupting the attorney-client relationship, and provided mediators a way to discuss potentially threatening (i.e., socially unacceptable) ideas in a non-threatening manner. For instance, Cynthia said,

I can [use strategic ignorance] with humor, as well, by purposely misunderstanding a word cause you know English. One word can have fifteen definitions, so I just pick one that has no sense. “Well, how does that mean that?” You pick this other definition and they look at you like you’re crazy. The lawyer’s laughing. Very often the other person will get it and say, “Honey, that’s a joke. She used the wrong definition of X,” but that’s playing stupid... Humor, laughing, always makes people feel better. And so any time I can play the buffoon to get them laughing, I’m happy to be the buffoon.

“Playing the buffoon” relieves tension and can allow the parties to feel superior to the mediator, which is another important way to maintain control. Cynthia continued,

Because it comes back to -- another version of “It’s not my problem” is, “It’s not about me.” And I don’t care if they think I’m an idiot. I suspect from the rest of the process that they won’t, but it doesn’t matter.

Cynthia uses humor to create a light-hearted atmosphere in these tense situations. She says that the issues are not her problems, they are not her situation to deal with. Several mediators discussed their difficulty with detaching from the mediation once it is finished. In other words, people often stew over the disputants’ conflict, rehashing what you could have done better to solve the conflict. Many new mediators take the issues home with them and are visibly discouraged when the mediation doesn’t settle. Cynthia uses humor as a way to remind herself that she is only playing a role in this situation, and that the process is not about her but about the disputants. The training that mediators receive suggests that they should leave the issues at the CRC door on their way out, but that is easier said than done. The flip side is revealed when a settlement is reached. Most mediators talk about a settlement as if they were part of the ongoing conflict. That is, mediators are taught to forget cases that do not settle but they are *not* taught to forget the cases that do settle. Many mediators count how many settlements they have reached, but if the process is for the participants, this tally should not be necessary, especially at a nonprofit volunteer mediation center. The idea of counting one’s successes ties to the professionalism that is constituted through the outcome-driven institutional mediation discourse.

Overall, mediators use several strategies to take control of the process and establish the environment, which by its very nature also creates the appearance of giving

away control. These strategies include caucusing with attorneys, being transparent with the process, using the court system as a threat, exhibiting strategic ignorance, using humor, and disguising statements in the form of questions. All of these strategies build common ground by creating the appearance of an equal distribution of control among the interested parties. These subtle discursive strategies are how mediators try to control the situation. Whereas attorneys use legal jargon and their knowledge of probable outcomes in the local courts to push for their client's position, mediators use the art of questioning to democratically involve the parties. This artful use of subtle strategies accomplishes the goal of control—which is really a stable mediation environment—and helps transform an adversarial, competitive conflict into a more collaborative conversation.

### **Retrospective Reflections**

Throughout the analysis, I learned that the attorneys who use the process of mediation often clearly see its value and advocate its use among their attorney colleagues. However, the attorneys that do not buy into the process force the CRC volunteers to employ defensive discursive strategies within their interpretive repertoires to try and establish the legitimacy of mediation. The attorneys and judges that I interviewed said they use the CRC because it is affordable, it reduces court dockets, saves taxpayers money, and improves community relations. They expect mediators to act in a professional, neutral, and emotionally composed manner. Several of the private mediators that I interviewed felt that volunteer mediation services are an excellent community service, and they also disclosed the difficulty of trying to earn one's income

solely from mediation. Only one person in this study earned her income solely from mediation, and she is also an attorney who chooses not to practice law.

On the other hand, the CRC volunteers view mediation as a way to serve underprivileged individuals, to give back to their community, and to help others out of altruistic motivations. However, when struggling for control either with an attorney or disputant, the volunteers quickly shifted to a defensive use of the voluntarism repertoire, implying that they should not be disrespected or treated poorly because they are not being paid. The dualism of public (e.g., volunteer) and private mediators was also a theme at the professional mediation gatherings I attended. The mediation profession is continuing to grow and will have benefits and challenges for both volunteer and private mediators. These two groups will continue to struggle to define their relationship to one another by discursively positioning each other in complimentary and condescending ways.

One final item I took away from the data collection and analysis was the enthusiasm with which my participants talked about their mediation experiences. Most of the participants asked for a copy of the final product. Before presenting my reflection and conclusions in the following chapter, two quotes aptly summarize the progression of my analysis of the messy, complex, and naturally evolving process of mediation:

Every case is unique. The facts and the law, at least the facts are unique to that case, and the facts are glossed over or affected by the needs, perceptions, personalities, [and] mental health of the human beings that are involved, not to mention those characteristics, those qualities of their attorney representatives. So

it's desirable to try to get a feel, imperfect though it is, to - of all those things before you bring people together.

Judge Donald describing the complexity of mediation

My whole problem with this cookie cutter approach of reading the [mediation] script is I feel like people go, "Well, okay. She did her job. She read all the points." You know, what did she really do? What did I really get out of it? So I - what I think the most unsuccessful mediations are not the ones that fail; [they are] the ones that leave and then the people are fighting again the next day.

Theresa, attorney-mediator critiquing the inert nature of mediation scripts

CHAPTER IV  
REFLECTIONS AND CONCLUSIONS

*“If you want to govern the people, you must place yourself below them. If you want to lead the people, you must learn how to follow them...Those who know don’t talk. Those who talk don’t know.”*

Lao-tzu

*“Good judgment comes from experience. Experience comes from bad judgment.”*

Idries Shah

Trying to pick the perfect quote to open the concluding chapter of this project was an arduous task. The two preceding quotes embody the spirit of what has been presented thus far. That is, successful mediators transcend traditional dichotomies such as leader-follower, evaluative-facilitative, assertive-passive, rational-emotional, competitive-collaborative, and controlling-empowering. Lao-tzu’s quote suggests that there are multiple forms of leadership, governorship, and knowledge, and that the world can be engaged, studied, and understood in numerous ways. As I struggle to find an encompassing and illuminating end to this tale of “talking about conflict,” I am struck with the realization that it could have ended many different ways. This revelation is tied to the fact that I am the research instrument trying to account for the complexities involved in the multilayered discourses of community mediation. Knowing what to say and when to say it during mediation is a product of experience.

Shah's quote about experience captures what many of the mediators and attorneys expressed throughout this project: that the only way to learn about and improve one's practice is to conduct as many mediations as possible. The most reflective and active mediators grow into the most celebrated and laudatory members of the field. Just as mediators share their "war stories" during informal interactions, this chapter shares the tentative, partial, and partisan knowledge I have gathered from this project. Many of these conclusions may change over time as new mediation strategies and discourses emerge and the CRC continues to grow, but the passion with which mediators engage their practice will remain. This section begins by summarizing the key elements of the previous chapters to address my research questions. Next, I highlight the lessons I learned from talking with CRC mediators and attorneys and from conducting mediations. Third, I present the theoretical and practical (e.g., engaged scholarship) reflections tying the CRC lessons to the extant literature and highlighting the theoretical contributions of this dissertation. Finally, I conclude with personal reflections on how my expectations were challenged and my knowledge about conflict was transformed over the past two years.

### **Lessons from the CRC**

The first research question revealed that CRC mediators rely on a variety of interpretive repertoires to accomplish their goal of settling conflicts. Specifically, they use the following repertoires: *Cultural Competence*, *Volunteer Pride*, *Parenting Norms*, and *Business Professional(ism)*. However, these repertoires are not mutually exclusive as the mediators often fuse them together and intertwine them with legal discourse.



Discourse is not a straightforward means to understand people's actions, thoughts, and beliefs. The analysis of the four repertoires demonstrates the relationship between the local discourse enacted during mediations and the institutional discourse(s) forming the foundation of those local discourses. Each of the repertoires is multifunctional, with the particular functions of the discourse being connected to the mediation context. The mediators rely on these repertoires to (a) build common ground between the disputants, (b) increase their personal credibility with disputants and attorneys, and (c) enhance the legitimacy of the mediation field. Further, the fluidity between the repertoires allows the mediators to balance rational and irrational (e.g., emotional) behaviors as they emerge in the mediation process. The challenges of this balancing act are explored in the second section of this chapter that explores the ideological implications of the repertoires using emotional management literature and Cheney and Ashcraft's (2007) analysis of professionalism.

The second research question focused our attention on how the CRC moves back and forth between the competing approaches of running a business and providing a public service. Within this dualistic framework, CRC members are able to assemble various discourses together and form a nascent community of practice through a variety of actions. First, they integrate individual practices into hybrid repertoires at professional gatherings, organizational meetings, and after co-mediations. Second, they identify their effective and ineffective habits and develop new discursive resources to help cultivate more effective strategies. Third, the CRC staff sanctions and prohibits ineffective behaviors so that new habits will take their place. Fourth, the CRC nurtures the central

discourse tying all the repertoires together, which is the institutional norm of neutrality. Finally, a select few mediators seek out educational materials to learn on their own and then share insights with others. When these strategies are combined, it leads to a resilient mediation community. These mediation practices include two of the three communicative elements explored by Iverson and McPhee (2008) and Wenger (1998) in their discussions of communities of practice. For instance, the CRC members mutually engaged the process of mediation by interacting with each other in many different ways, and these patterns of interaction constitute the CRC as an organization. During the mutual interactions, individuals create a shared repertoire of familiar resources such as common language, strategies, routines, and information. The CRC members have a common endeavor, which is called their joint enterprise; however, they are not creating the joint enterprise. The joint enterprise emerges as a result of the institutional discourse (Lammers & Barbour, 2006) of the mediation field. The second section of this chapter also examines this study's contributions to the community of practice literature.

The third research question draws our attention to power relations, issues of control, and how the CRC members used different resources (e.g., discursive, social, material) to achieve organizational goals. Due to the omnipresent nature of legal discourse within mediation settings, the struggle over appropriate roles between the mediator and attorneys, and the emergence of a dialectic of control (Giddens, 1984), mediators use discursive strategies to build trust and take control of the process. Whereas attorneys use legal jargon and their knowledge of probable outcomes in the local courts to push for their client's position, mediators use subtle discursive strategies

such as the art of questioning to democratically involve the parties. This artful use of subtle strategies accomplishes the goal of control—a stable mediation environment—and helps transform an adversarial, competitive conflict into a more collaborative conversation. These issues will be explored later in this chapter by considering how a discursive approach to structuration theory (Giddens, 1984; Heracleous, 2006) demonstrates that mediators must struggle to bring the goals and roles of mediation to the foreground and position the laws and legal issues in the background.

### **Theoretical and Practical Connections**

#### **Repertoire Management: Emotional Politics and Professionalism**

Potter and Wetherell's (1987) explanation of interpretive repertoires draws attention to the active process of constructing discourse. This action-oriented analysis reveals the relationship between discursive *functions* and discursive *variability*, or how people's discourse varies over time and is frequently contradictory. Phillips and Jorgensen (2004) note that "equal stress is placed on what people do with their text and talk and on the discursive resources they deploy in those practices" (p. 105). Because interpretive repertoires consist of a limited number of terms used in a particular style and grammatical way, they are often clustered around a central metaphor, image, figure of speech, description, or habitual form of argumentation (Fairhurst, 2007; Phillips & Jorgensen, 2004; Potter & Wetherell, 1987; Sheep, 2006). Four such repertoires emerged from my data analysis and were presented in Chapter III.

The four repertoires that CRC members use (cultural competence, volunteer pride, parenting norms, and business professionalism) are conceptually interesting

because they are discrete units of talk that have some common features but transform over time as they are enacted in different situations. In short, they are “recurrently used systems of terms used for characterizing and evaluating actions, events, and other phenomena” (Potter & Wetherell, 1987, p. 149). The concept of interpretive repertoires emphasizes that discourses are drawn on in social interaction as flexible resources and change over time due to rhetorical use (Phillips & Jorgensen, 2004). In other words, the discourses are occasioned. Individuals produce and reproduce interpretive repertoires to accomplish things with their language, which is consistent with the ethnomethodological aspect of discursive psychology (Garfinkel, 1967). Because ethnomethodologists are interested in the rules that people use to make sense of their everyday discourse and interactions, a discursive psychological approach explores the implicit and explicit rules people use to engage others. Within a mediation setting, one of the rules mediators rely on is the acknowledgement and management of emotions.

Miller, Considine, and Garner (2007) develop a conceptual typology that delineates the relationship between emotions and the workplace and appropriately frames the results of this study. Their typology includes: emotional labor, emotional work, emotion at work, emotion with work, and emotion toward work. I briefly explain the relevant ideas from this typology by highlighting their connections to the emotional management literature. Waldron (1994) reminds us that many communication interactions between employees and clients involve emotions as part of one’s job. There are many organizational roles and settings that have been studied to understand the emergence and use of emotion at work including nurses, doctor-patient relationships,

spiritual advisors, flight attendants, members of the restaurant industry, and customer service representatives. Specifically, Hochschild's (1983) seminal work on *emotional labor* in the airline industry led to a wealth of scholarship.

Emotional labor occurs when workers must display organizationally sanctioned feelings to fulfill their work roles. She argued that emotional laborers engage in either surface level acting or deep level acting. For instance, smiling at an irate mediation disputant is surface level acting, whereas transcending the entire situation by creating a secondary reality (e.g., imagining solving an unsolved crime) is a form of deep level acting. Although Hochschild's focus was on how for-profit organizations try to harness their employees' emotions for commercial gain (Lewis, 2005), mediators are taught to identify and defuse emotions because they play a crucial role in the process of mediation. Waldron (2000) challenges scholars to look beyond the emotions that are part of doing one's job and direct our attention to the emotions that emerge from workplace relationships. He found several important aspects of workplace relationships that can lead to intense emotional expressions, and I explore two of these in relation to mediation.

Waldron said that (a) conflicting allegiances and (b) emotional rights and obligations can lead to struggles over how to best express or suppress one's emotions. Conflicting allegiances are typical of large, complex, and bureaucratic organizations where employees interact with many different coworkers on a daily basis. People develop conflicting loyalties to different departments or divisions in these large organizations. This concept also has heuristic value when applied to the Conflict

Resolution Center, because members use their interpretive repertoires to build allegiances and control emotions during the mediation process. Repertoires are a means to control their own emotions, such as when discussing Volunteer Pride in a defensive manner, but they are also a way to deal with emotional attorneys and disputants (e.g., using Parenting Norms to point out the irrationality of a suggestion). Attorneys are very cognizant about mediators building allegiances, and they want the mediator to remain neutral. Thus, mediators use the repertoires as a way to create the perception of neutrality even when one party is clearly wrong.

Waldron (2000) also differentiates between emotional rights and obligations, and CRC members use the repertoires to navigate back and forth between these two concepts. For instance, disputants have the right to air their grievances, have the right to tell the other party how they really feel, and have the right to disagree with ideas they dislike—all manifestations of sincere emotions. Most attorneys, however, are not comfortable with emotional expressions as part of the mediation process. Enacting the Business Professional(ism) repertoire is an easy way to remind the attorney that the clients have a *right* to express their emotions and the mediator has an *obligation* to ensure the protection of that right. Benjamin (2009) also suggests that mediators have an obligation to vigorously advance issues and express emotions if those strategies will move the process toward settlement. Throughout this perplexing environment mediators must also monitor the interactions to ensure that the expressed emotions do not violate the rules and roles set forth at the beginning of the mediation process.

Within Miller, Considine, and Garner's (2007) articulation of emotions and the workplace, they call for future analyses of context and relationships. Community mediation settings clearly involve several sets of relationships that form a large part of the organizational context. This dissertation investigates the complex interrelations between context and mediator-attorney relationships, which are often manifested in discursive struggles. Further, Fairhurst and Putnam (2004) suggest that a discursive analysis provides detailed accounts of discursive processes, and thus, this project provides a "detailed understanding of how individuals talk about work and emotion and work" (Miller, Considine, & Garner, 2007, p. 256). The discussions of emotion at work include how the mediators' respond to the disputants' grief and how they try to achieve mutual respect with the attorneys. Each of these processes involves compassionate communication.

Miller (2007) further developed a conceptual scheme regarding compassion that was originally articulated by Kanov, Maitlis, Worline, Dutton, Frost, and Lilius (2004). Miller's scheme includes the following sub-processes of compassion: noticing, connecting, and responding to others. Miller said that "noticing" includes both noticing the need for compassion and the intricacies of clients' lives, which are each necessary to begin to build a bond with them. Establishing rapport with the disputants and attorneys is essential, and this process often starts by asking questions about the parties' personal lives. The second process, which Kanov et al. (2004) called feeling, was reframed as "connecting" and includes showing empathy and taking multiple perspectives into consideration. Mediators must remain empathic to both sides and try to get the

disputants to see the world from each other's shoes. Finally, the process of "responding" includes both nonverbal strategies, such as eye contact, touch, and posture, and verbal strategies for defusing the emotional content of messages and reframing threatening, unproductive, or uninformative messages. In short, Miller's (2007) typology summarizes the type of communication that successful mediators strive for, which is compassionate.

Communicating in a compassionate manner explicitly involves a level of emotionality. The acknowledgement and permission of emotional expression is a key part of the mediation process. Successful mediators mask their own biases, assumptions, disappointment, excitement, and anger while simultaneously allowing disputants to express their emotions. The management of emotions through interpretive repertoires is a form of *emotional politics*. This term has several meanings and unintended consequences. First, emotional politics is a way to use emotions as a weapon to satisfy personal goals. This occurs when an irrational, verbose, loud, and potentially threatening person forces the rational, calm, quiet, and considerate individuals to become unproductively emotional. The politics of emotion draw others into an emotional game and undermine the process of mediation. This is an expression of emotional immaturity, and as soon as a mediator reacts defensively, the mediation process has been spoiled and a settlement will probably not be reached. This scenario is reminiscent of a child throwing a tantrum and ruining the parents' previously cheery disposition.

Second, mediators rely on their interpretive repertoires to try and prevent the first scenario from occurring. It is necessary to allow emotions to be expressed but only to a certain point. Third, the emotions that emerge from community mediation relationships



are different than commercial organizational relationships because they involve members with (a) unequal power bases, (b) different levels of professional knowledge, and (c) emotions that are intertwined with “rational” issues. Thus, the stakes are very high in mediation. Attorneys, disputants, and mediators all have access to different cultural and discursive resources and potentially diverse approaches to problem solving. Emotional politics in community mediation thus combines the idea of emotions as being part of one’s job and as emerging from workplace relationships; it may involve surface and deep level acting and include authentic emotional expressions. No matter what kind of emotional politics arise, mediators must exude emotional maturity by balancing several sets of emotions as part of their professional duty. Although few people would argue that the professional duties of financial planners include acknowledging and responding to emotions, Miller and Koesten (2008) found that financial planners must manage emotions as often as monitoring changes in tax code. The researchers suggest that the emotional work of financial planners is part of their professional identity even though they do not receive professional training to deal with emotions. As part of a mediator’s professional duty, they assume the role of emotional archaeologist by digging through an assortment of emotional skeletons, dusting off the ones that need to be further expressed and explored, and compassionately communicating these issues with all parties.

Miller (2007) said that “when compassion is being communicated, the notion of ‘detached concern’ is not at all oxymoronic but is, instead, a set of complex choices for managing boundaries in interaction and coping with the possible dangers of connection

in human relationships” (p. 236). As one of the mediators stated in Chapter III, being “detached” is a warranted approach to mediation, but a “detached concern” is a more appropriate way to capture how effective mediators manage the mediation process. Miller (2007) also said that “in compassionate work it is critical to be aware of and respect the boundaries of both the client and the care provider” (p. 236), or in the case of mediation, one must acknowledge and respect the boundaries between the disputant and the attorney. Unfortunately, there is no prescriptive rule to best deal with these contextual and relational nuances in professional settings. The best mediators are simply the ones who mediate often and explore different ways of achieving compassionate communication. We now turn briefly to the scholarly discourse on professionalism.

Cheney and Ashcraft (2007) analyze “professionalism” discourse in contemporary society and offer three ideas about the taken-for-granted term that are relevant to this project. First, they suggest that “professionalism has been almost universally valenced as positive, without recognition of its blind spots and associated forms of suppression” (p. 169). These blind spots can include diminished creativity and autonomy over one’s daily job activities. In addition, the authority figures at the top of the professional hierarchy demand accountability from those below them and sanctions can emerge from not following formalized professional norms. Several scholars found that the mediation field is already moving toward specialization and professionalization (Hedeem, 2003; Schwerin, 1995), for the better or worse.

Second, Cheney and Ashcraft point out that the sociological conception of professionalism, which is the dominant definition in both scholarly and popular

discourses, emphasizes three institutional developments: the division of labor in modern society, the emergence of authoritative classes of experts, and the creation of communal ties of ethical obligation. Each of these sociological aspects is developing in the field of mediation. For instance, professional conference materials and training sessions encourage mediators to specialize in a specific type of mediation such as family law or real estate cases. According to these prescriptions, mediators, like their attorney counterparts, should be viewed as specialized experts who have the “answers” to solving disputants’ financial and psychological troubles. Cheney, Lair, Ritz, and Kendall (2010) said, “Specialization often creates unnecessary barriers to collaboration between those practicing different skills while working on the same problem” (p. 128). The discursive differences between attorneys and mediators clearly illustrate this point. Finally, the mediation community has an ethical obligation to remain neutral at all costs.

The third relevant idea from Cheney and Ashcraft (2007) is their conceptualization of “the professional” from a communication perspective, saying,

A communication-oriented analysis brings to light...consequential meanings and functions of the professional: inventing or coding a kind of activity and work or worker; indexing, expressing, and evoking modes of performance; [and] producing, maintaining, and (de)valuing occupational networks...Communication’s insights regarding the power of the symbolic can challenge...how “mere” labels, metaphors, and narratives evolve and function persuasively and consequentially in everyday practice and scholarship. (p. 168)

This study contributes to a communicative approach to professionalism by showing how the members of a *potentially*<sup>8</sup> emerging profession focus solely on the *benefits* of that discourse. The participants in this study employed the professionalism repertoire without mentioning the potential constraints or unintended consequences of that discourse. Mediators desire the legitimacy and authority that come with the establishment of a profession but they are not contemplating the rules, codes of conduct, and legal consequences of establishing such formalized relationships. Currently, professional mediation organizations are decentralized and operate according to their own rules and whims, thus, there is no national or international accreditation, certification, or licensure processes. However, many of the presentations at the conference I attended dealt with establishing these processes of professional legitimation. In short, the results of this study confirm Lair, Sullivan, and Cheney's (2005) idea that professionalism is a persuasive way of talking about work, one's identity within that work, and one's relation to other professionals doing similar work. The next section highlights this project's contribution to the community of practice literature.

### **Extemporaneously Practicing 'Community'**

Wenger (1998) developed a core set of ideas to explain how people interact as collectives to carry out daily activities and learn from one another. He found that these collectives often form in larger organizational structures such as educational institutions,

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<sup>8</sup> I have italicized "potentially" because certain participants, such as Judge Donald, do not believe that the mediation field is a profession or a field, directly contrasting Hedeon (2003) and Schwerin's (1995) arguments. He called mediation a "baby" and said it is more a "network of like-minded people trying to do some good." In either case, it is unclear whether mediation will ever gain the prominence of the legal field and become licensed by the state.

religious organizations, and commercial organizations. For instance, Wenger and Snyder (2000) analyzed communities of practice that emerged at the intergovernmental financial institution known as the World Bank, within one of the powerful corporate lobbying arms known as the Business Roundtable, and at several multinational auto manufacturers such as Daimler-Chrysler. The smaller collectives are distinct from the larger organizational form, and it is through these smaller groupings that people learn about their role in the organization. According to scholars (Iverson & McPhee, 2008; Lave & Wenger, 1991; Wenger, 1998), these communities of practice (COPs) are characterized by three essential elements—mutual engagement, joint enterprise, and shared repertoire—and scholars have used this basic structure to study many types of organizations and the communication processes within them (Wenger, 1998; Wenger, McDermott, & Snyder, 2002; Wenger & Snyder, 2000). Two communication scholars have extended Wenger's original research program to focus on the process of *knowing* rather than knowledge (Iverson & McPhee, 2008). They analyzed the three core components of communities of practice to demonstrate how knowing unfolds, and their process-oriented approach to documenting knowing and learning parallels the goals of this project.

Specifically, this project contributes to the COP literature in several ways. First, it argues that the three original COP elements do not always constitute a COP. That is, other elements can also constitute a COP including mutual engagement, shared repertoires, and an extemporaneous approach to one's enterprise or practice. As the results from Chapter III demonstrated, CRC mediators do not have the opportunity to

negotiate their joint enterprise because they are constrained by the institutional discourse (Lammers & Barbour, 2006) of mediation (e.g., always remain neutral). Successful mediators do, however, employ extemporaneous approaches to their practice. For instance, results confirm that mediators combine repertoires in-the-moment and enact these hybrid discourses to facilitate conversations, calm emotions, and build common ground. Mediators then share their strategies and stylistic decisions with other mediators in informal and formal gatherings and interactions. In combination with their background training and knowledge of mediation (i.e., practice and preparation), mediators adapt and enact their interpretive repertoires in the moment to accommodate the immediate situation. They are excellent at “reading the room” and knowing when and what to say to keep the process moving forward. Janelle said it best, “I don’t know how I get settlements, but I do...they sort of just occur.” Mediators often have difficulty explicitly stating the ideas that guide their practice because they are often subtle, unplanned discursive strategies. There is no formula for effective communication, no recipe for building trust, and no prescription for defusing hostile emotions—it is more of an improvised performance, which Eisenberg (1990) calls jamming. CRC mediators extemporaneously engage their mediation practice because they cannot anticipate what people will say or how they will react, but they react this way for good reason.

The CRC—as a blossoming community of practice—employs an extemporaneous approach to organizing that exercises a wide degree of autonomy to adapt to unforeseen circumstances. The autonomy that contributes to the success of the CRC emanates from its form as a loosely coupled system (Weick, 1976, 2001). This

system serves as an effective structure for localized adaptation, accepts novel solutions, creates space for autonomous organizational actors, and functions on a small budget. The CRC has to manage its employees on an ad hoc basis because they are volunteers; they cannot force them to mediate. Because there is a large gap between the levels of knowledge of the CRC mediators, it is necessary to create structures that ensure experienced mediators share their ideas with less experienced mediators. The CRC must remain flexible in pairing up these two groups of mediators because many people do not like mediating with new mediators. Further, the CRC must accommodate the unpredictable case load from the courts. Thus, scheduling, which the executive director said is the “most important and most challenging part of the business,” occurs on an ad hoc basis. In addition, the CRC “flies by the seat of [its] pants,” as one of the board members put it when referring to how they planned their mediation training sessions. Scheduling meetings at the last minute, people not showing up, and trainers arguing over areas of expertise are all part of an extemporaneous organizational style.

In summary, because the CRC organizes in a loosely coupled manner, and its members assemble various repertoires through a variety of interactions (i.e., informal conversations, co-mediations, quarterly roundtables, conferences, and sharing educational materials), the CRC represents a burgeoning community of practice. Their mediators (a) mutually engage each other and the field of mediation, (b) approach their mediation practice extemporaneously, and (c) share their interpretive repertoires with one another in both formal and informal interactions. COPs typically emphasize flexibility, innovation, and the ability to create knowledge in unforeseen directions

(Engestrom, 2007), and these qualities are all embodied in the CRC. It is a community of practice that has private (e.g., business) and public (e.g., community service) aspects that take a great deal of balancing to maintain, and the CRC successfully and extemporaneously practices its own unique form of community. The next section illustrates the project's contribution to structuration theory by discussing issues of power and control and suggesting areas where future research is warranted.

### **Control, Power, and Empowerment: Agency and Structure**

Structuration theory (ST) says that structures serve as both process and product for the (re)production of a social system such as an organization, which Giddens (1984) calls the duality of structure. Within this duality, rules and resources are the structures that people use to reproduce the patterns that constitute social life, and ST emphasizes the role of these structures in constituting groups, organizations, and entire societies. A discursive approach to structuration theory (Heracleous, 2006) explores the interaction between local discourses enacted by individuals and the institutional discourses guiding them. The mediating structure that actors use to bridge the micro and macro discourses are interpretive repertoires, which Giddens calls interpretive schemes. Within the context of mediation, mediators rely on resources such as the institutional discourse of neutrality, introductory statements outlining acceptable roles and turn-taking rules, and their designated authority from the courts. As mediators draw on these ideas throughout the mediation they reinforce their legitimacy and reproduce them. The end goal is a mediated settlement, which is the product of enacting the rules and resources through the interpretive repertoires. Heracleous (2006) summarizes this process, saying, "Discourse



is viewed as a duality of communicative actions and deep structures, recursively linked through the modality of the actors' interpretive schemes" (p. 108). Thus, the interpretive repertoires are the lynchpin tying the structures together, and they are the vehicles through which mediators and attorneys struggle to solidify their understanding of the situation. Because of the equivocality (Weick, 1979, 2001) associated with mediation, individuals struggle to define it from their discursive perspective. Drawing on institutional discourse is obviously a powerful ally.

The institutional mediation (and legal) discourses are reproduced on the local levels (e.g., during mediation) when mediators and attorneys use interpretive repertoires. The institutional theory of organizational communication (Lammers & Barbour, 2006), which emphasizes three key features of institutions—rationality, formal knowledge, and independence—underscores why the institutional discourses of mediation and law constitute such strong themes within the four interpretive repertoires. Lammers and Barbour said that "individuals' communicative behaviors constitute both organizations and institutions" (p. 372). This is why enacting interpretive repertoires (a) reproduces the rules and norms of the mediation field (i.e., institutional action), (b) serves as the key organizing features of the CRC (i.e., organizational action), and (c) legitimates and ties mediation to the law. The CRC mediators reproduce the mediation structures because of familiarity, training, and necessity – they keep the process moving in a productive direction. In short, the rules and resources that are produced through interpretive repertoires function as a form of control. Control usually has a negative connotation, but this project argues that control is the first step in the process of empowerment.

Previous organizational communication research (Mumby, 2005) argues that an implicit duality of resistance and control exists, but this study found a dialectical relationship between control and empowerment. These two concepts are different but closely related features of the same idea: help individuals peacefully resolve their conflicts through communication. To achieve this goal, mediators must take control by establishing the environment and working the process. The mediators must also give some control to the attorneys to validate their expertise and preserve their social position in the mediation (e.g., relationship and duty to client).

One Foucauldian approach argues that community mediation is merely an extension of state power agents in a new form that enables the state to exert control at the community level (Abel, 1981; Matthews, 1988; Santos, 1982). These critical scholars responded to the 1980s community mediation movement, also known as the neighborhood justice movement, with great skepticism, which Matthews (1988) summarizes as “nothing more than an attempt to widen the net of social control” (p. 10). These scholars employ Foucault’s (1979) approach from *Discipline and Punish: The birth of the prison*, suggesting individuals are powerless to resist total institutions such as the state. In other words, resistance to the control of state agencies is futile. However, although Foucault’s scholarship suggests that resisting powerful actors and discourse is futile, he does discuss rare moments where freedom, which I am defining as empowerment, can flourish (Foucault, 1988). Agusti-Panareda (2005) suggested that community mediation can, but does not have to, lead to empowering outcomes for the

disputants. It is through these rare discursive spaces for empowerment that I position my use of the Foucauldian connection between power-knowledge.

It is important to understand that overarching systems of knowledge (i.e., institutional discourses) have ramifications for how mediators and attorneys view their relationship to each other and experience the process of mediation. In community-based mediation, the mediators and attorneys rely on power that is derived from knowledge of particular discourses to forward their agenda. Power is thus created, negotiated, and transformed during mediation while mediators are trying to help resolve a disagreement in the “best interest” of both parties and include the attorneys in this process. The struggle to define which discursive resources are viewed as legitimate is an ongoing, complicated interaction. The mediation process is not neutral and there are several levels of power operating as the mediation unfolds. Whether or not the mediation gets defined as a mere extension of the courts (i.e., legal focus) or an alternative to the courts and a community resource (i.e., non-legal, communication focus) is a reflection of which discourse gains favor with the participants.

In short, the legal code represents the ultimate state-based resource and the backbone of the legal discourse, and it is reproduced when used to justify and explain behaviors and decisions during mediation. What mediators must explain to both attorneys and disputants is that the disputants are *legally* able to agree on actions not spelled out or contained in the legal code. Most negotiated agreements contain a “mutual agreement” clause stipulating that any actions that arise out of mutual agreement between the parties are legal, and that if the parties cannot agree they must then follow

the legal guidelines. This project posits that using the four interpretive repertoires to ensure that the parties understand and acknowledge the principle of mutual agreement is a form of mediator *agency*, which is, of course, tied to the legal *structure* that supports it. This is a concrete example of how interpretive repertoires combine multiple discourses that reproduce social structures (i.e., mediation and legal norms) and produce new social relations (e.g., mediated agreements that can alter future actions). Before any social transformations and empowering moments for the disputants can arise, mediators must first establish control of the mediation process and environment. It is only by taking control that the mediator has the opportunity—even if it is rare—to help people achieve autonomy in their decision making.

### **Engaging Reflections**

Organizational scholars who practice “engaged research” enthusiastically apply knowledge to improve some aspect of the organization with which they are working. In addition to gaining a holistic understanding of how and why community mediators use interpretive repertoires, a secondary goal of this project was to use newly discovered knowledge to improve the mediation practices of the Conflict Resolution Center. Before discussing my personal reflections from this project, I first position the study within the “four faces of engagement” (Putnam, 2009). The four faces of engagement include applied communication research, collaborative learning, communication activism for social justice, and practical theory.

This study is a hybrid form of engaged scholarship that I am calling *holistic engagement*, because it encompasses processes from each of the four faces of

engagement. First, I built in specific opportunities for reflective conversations with the organization to fulfill the reflexive component of practical theory. I not only often talked with Joe, the executive director, but I also talked with CRC board members and mediators to provide input on how to improve the center and my own mediation practice. Second, I co-constructed many of the research materials with the CRC, including research questions, interview protocol, and ways that the CRC can use the results to improve their practices. These actions exemplify a form of collaborative learning. On May 22, 2010, I am presenting my research results as the featured speaker at one of the CRC's quarterly roundtables. The CRC is inviting all members of the conflict resolution community including local judges, attorneys, participants from this study, and other CRC organizations throughout the state. Third, by addressing real-world issues and creating useable knowledge, I performed a key aspect of applied research. For instance, I created 10 training scenarios and two in-depth PowerPoint presentations that we used during the spring 2010 mediator training sessions.

Fourth, I served financially disadvantaged individuals by working through their conflicts with them. Most of the CRC clientele is from a lower socioeconomic status, and I realized that these people often place their decision making power into the attorney's and mediator's hands. I used interpretive repertoires and discursive strategies to help them recognize that they can also provide solutions to their issues. I also assisted an under-resourced organization by developing training materials and participating in training as a communication expert. All of these actions are a form of communication activism for social justice. As an activist scholar, I paid attention to the choices I made

and the effects they had on the organizational members, always cognizant of whose interests I was privileging (see Frey & Carragee, 2007). Overall, I fulfilled multiple roles for the CRC: volunteer mediator, communication expert, organizational structure and public relations consultant, and mediator trainer. I made the shift from standing by and observing, describing, and analyzing an organization that assists under-represented individuals (i.e., third-person-perspective-studies) to “get[ting] in the stream and affect[ing] it in some significant ways” (Frey & Carragee, 2007, p. 6). The holistic engagement with this single organization led to a variety of learning opportunities.

This case study gave me the opportunity to (a) explore the real-world functioning of an organization in context, (b) stimulate my own reflection on others’ actions, (c) provide exemplars of proper and improper organizational behaviors, (d) prompt discussions regarding alternative modes of action between the organizational members, (e) provide an opportunity to apply theoretical knowledge, and (f) serve as a cause for future action or research (May, 2006). This case study has helped me grow as a qualitative researcher, a scholar, and an engaged practitioner. I went into the field assuming that all attorneys would try to control the mediation but that was not the case. There are attorneys who value the collaborative approach to mediation. Attorneys must perform the evaluative-expert role for their clients—that is what they get paid to do. As long as mediators provide space for this to occur, the attorney/mediator relationship has a better chance to develop in a mutually respectful manner. Second, I expected mediators to be intimidated and bullied by attorneys, and even though people expressed this fear, I never observed this dynamic first hand. The mediators who I co-mediated with were

very assertive, confident, and knowledgeable of the process. Third, I realized that my position as a highly educated white male provided me credibility in the Smithton community. I was able to develop trust quickly with participants because of the similarity of our physical and cognitive attributes. Most of the attorneys and disputants were also Caucasian and had some level of higher education; I might have experienced different levels of success had I been the ethnic minority. Fourth, I observed that older mediators are granted credibility more quickly by the attorneys and disputants. The parties assumed that these mediators are able to perform at a higher level than a younger mediator because they have been exposed to and reached more settlements. Older mediators can draw on their life experiences such as career tracks, family issues, and child rearing strategies that I have not experienced. Although I only experienced age discrimination once, further probing into the dynamics between age, knowledge, and confidence between all involved parties would be of interest to future studies of the mediation process.

Finally, my knowledge about conflict was transformed over these past two years. I saw how many people give up their willingness to participate in their own lives by handing control over to professionals. People are so disenfranchised by their personal struggles that they look to others to provide workable solutions. This is a trend that needs to be reversed and mediators can help people feel empowered to take (some amount of) control back. I also learned to not “expect people to be their best when they are at their worst,” as one of the mediators put it. This has helped me in the classroom as an instructor, in my personal relationships with friends and family, and in mediation

settings. It is irrational to expect people to make “rational” decisions when they are involved in the most stressful times of their lives. I also learned that many issues are not mediateable because they have not ripened. Just like one must pick tomatoes while ripe—if picked too early they are green, stiff, and bitter whereas if picked too late they are black, soft, and rotten. Disputed issues are very similar: if talked about too early people become embittered and entrenched in their positions whereas if discussed too late an acceptable compromise could be lost and negatively affect people’s lives. Mediation is one environment that focuses on the embodied expression of emotions, ideas, and actions between multiple parties.

As an ethnographic researcher, I must be attentive to the embodied nature of participant observations. Darling-Wolf (2003) reminds us that research interactions must always be authentic and not motivated by purely research-driven goals. This was essential to remember during the project because I was observing people experiencing real conflicts and expressing authentic emotions. In addition, I will keep in contact with both the CRC and the professional mediation organizations and will continue to mediate when I visit this state. Interestingly, both ethnographers and mediators experience a *resignation of responsibility*. Ethnographers have the tendency to study a population, extract scholarly knowledge, and then exit the research scene without a thank you or good bye. Mediators tend to resign responsibility when mediations do not settle and they often look to justify the impasses for external reasons such as unruly clients and attorneys. They place the locus of control outside of their own styles and decisions. On the other hand, if a mediation does settle mediators treat it as if they individually



produced the outcome like pulling a rabbit out of a hat. I have learned to accept responsibility for distasteful results both in the mediations I conduct and in my research endeavors, as well as to recognize how all parties contribute to a successful outcome. As Lao-tzu and Idries Shah opened this chapter, one of the best ways to lead is by following others, and to learn to do this I need to keep gaining experience.

In summary, the primary argument being advanced in this dissertation is that the institutional knowledge and discourses provided by formal training sessions, educational mediation materials, and professional conference attendance is of secondary importance to developing one's interpretive repertoires by mediating as often as possible. The extemporaneous engagement of issues, emotions, and discursive strategies is also essential, but this skill can only be cultivated as a result of time and practice. The most successful mediators prepare and reflect on their practice, but when mediating, their interpretive repertoires will take many different forms even while they are anchored around key terms, metaphors, and habitual forms of argumentation. Judge Donald's touching confession about he and his wife's commitment to mediation sums up the passion that mediators have for their practice and the good that this form of conflict resolution can potentially create:

When they wake up tomorrow, they're - they will have a lighter load to carry than they did the day before, and that resonates big. I didn't realize how true that was. My first big exposure to that was when my wife went to do her first volunteer mediation and she settled this divorce case and came home and told me in general terms what had happened and the way people were acting afterward.

It all - we just started peeling back the layers of the onion of this whole scene and it dawned on us that that family feels so much better today than they did before and their two children affected by this in almost countless ways and it might have actually created a generational improvement for that whole family, that now there will be two children who will grow up in a more positive environment. They - they haven't had the damaging effects of a prolonged divorce, a lengthy, prolonged divorce. It's been compressed now by several months. So they may prove - they may grow up to be more successful people, more well adjusted people, have more successful marriages themselves, produce children that will come home to visit those adults. Everybody will benefit. I said to [Tammie] at this table, "It's almost as if you went into" - to use this analogy - "went into an operating room - and removed a cancerous tumor from the body of this family and radiated the surrounding tissues and cured them of this - this disease that they had." It's -- that's not too strong a statement to make.

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APPENDIX A  
INTERVIEW GUIDES

**In-Depth Qualitative Interview Guide**

**Forming a Community of Practice**

- How long have you practiced mediation?
- In what ways do you stay current on emerging mediation techniques and ideas?
- What were the ideas that made the most sense to you from your mediator training?
- Imagine watching a successful mediator – describe the skills that makes them so effective.
- What can mediation centers do to create more opportunities to share between busy volunteers?

**Organizing the Mediation Process**

- What is the most important thing to remember when conducting a mediation?
- Share a story or example showing how you control emotions.
- What is one of the biggest challenges of conducting mediations?
- Describe the differences between legal and non-legal mediators. Volunteers vs. fee-based.
- What techniques have you developed over the years that help you mediate that you might not have learned in training?

**Multiple Discourses**

- Describe a time when you were faced with a stalemates/impasse. What did you do and/or what could have been done to overcome it?
- How familiar should mediators be with the law?
- Is there anything you specifically avoid saying or doing?

**Role of Power**

- How do you establish credibility in the mediation?
- Describe your style as a mediator.
  - Are there any metaphors or phrases that guide how you conduct mediation?
- Have you ever had a problem with an attorney or disputant during a mediation?
- What is your opinion about moving to a settlement too quickly?
- What do you view as a successful mediation?

**Concluding Remarks**

- What is the best part of being a mediator at the DRC? Most difficult part?
- If you had three wishes, what would they be regarding the process of mediation?
- Do you think mediation will become licensed by the state like lawyers in the future?
- Questions for me?

**Ethnographic Interview Guide**

- What is the most important thing to remember during a mediation?
- Why do you attend these conferences?
- What have you learned over the years that has improved your practice?
- What was the most difficult mediation you have ever done and how did you respond?
- How do you deal with difficult disputants or attorneys?
- What is your most successful mediation of all time and why?
- In what ways do you keep attorneys involved but not allow them to dominate?

## APPENDIX B

## REVISED CODING SCHEME

## I Developing Communities of Practice

- A. Discovering mediation
- B. Effective mediation strategies
- C. Necessary mediation skills
- D. Expanding the mediation field
- E. Learning about mediation
- F. Mediation resources
- G. Roundtable learning
- H. Structure of the Conflict Resolution Center

## II Mediation/Attorney Relationships

- A. Effects of attorney representation
- B. Forcing settlements
- C. Ineffective mediation skills
- D. Effects of legal training
- E. Mediator evaluations
- F. Mediator legal knowledge
- G. Pro se mediations
- H. Relationships to attorneys

## III Issues of Control

- A. Communication
- B. Effects of attorney representation
- C. Empowerment
- D. Limiting emotions
- E. Negotiation
- F. Purpose of mediation
- G. Set the environment
- H. Work the process

## IV Theory and Practice

- A. Mediation is emotional
- B. Limiting emotions
- C. Necessary mediation skills
- D. Training
- E. Summarizing, reframing, rephrasing

## V Skills and Emotions

- A. Mediation skills in personal life
- B. Mediation is emotional

- C. Limiting emotions
- D. Effective mediation strategies

#### VI Conflict Resolution Center

- A. Affordability
- B. Using the Conflict Resolution Center
- C. Structure of the Conflict Resolution Center
- D. Not using the Conflict Resolution Center

#### VII Organizational and Institutional Issues

- A. Mediator motivation
- B. Payment perception
- C. Institutional discourse
- D. Licensing mediation
- E. State mediation differences

#### VIII Engaged Scholarship and CRC

- A. Great quotes
- B. Interesting stories
- C. Mediation is emotional
- D. Limiting emotions
- E. Mediation skills in personal life
- F. Mediator evaluations
- G. Not using the Conflict Resolution Center
- H. Purpose of mediation
- I. Mediation resources
- J. Successful mediations
- K. Training

## VITA

Zach A. Schaefer received his Bachelor of Arts degree in communication from Saint Louis University in May, 2004, and his Master of Arts in communication from Saint Louis University in May, 2006. Zach received his Ph.D. in August, 2010, from Texas A&M University. His research interests span the areas of ethnographic, qualitative, organizational, institutional, and sociological approaches to communicative phenomena. Of specific interest to him are how collectives of people use various discursive resources to approach and solve conflicts. Zach has also conducted research and written about qualitative methodology, ethical practices in organizations, the ethical implications of economic discourse, and the complex symbolic-material relationship embodied in social class. His research has been published in *Management Communication Quarterly* and *Organization*. In addition to his scholarly writing and research, Zach will continue his mediation practice upon his return to the Midwest and will attend law school to as a way to blend his theoretical and practical interests.

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