

Taylor, Alison. *The Handbook of Family Dispute Resolution: Mediation Theory and Practice*. San Francisco, California: Jossey-Bass, 2002.

Alison Taylor has been a professional mediator for more than twenty years. She practices in the Portland, Oregon, area, and teaches at Portland State University and Marylhurst University.

Preface. Part one (Practical Theory) deals with family system's theory. Part two (Family Mediation Processes) addresses special complex issues facing mediators, such as multiculturalism, abuse, and drugs. Part three (Specialized Practices in Family Mediation) applies mediation theory to common family dispute problems.

I. Practical Theory

Chapter 1: Understanding Family Dynamics.

Families are relational systems, sometimes in need of assistance to change from patterns that do not fit one or more members to more functional patterns. Family systems: 1) need stability without losing ability to change, 2) develop over time, 3) must be open enough to admit ideas leading to change, but closed enough to prevent loss of identity, 4) create a sense of belonging without stifling individuality, 5) communicate between members by word and deed (one cannot not behave or communicate, any communication's meaning is individually interpreted, and every communication has a context, 6) comprise subsystems (dyads and triads). Any change changes the family system.

Boundaries regulate contact between family members and outside systems. Some boundaries should leak, as exceptions to their rule. Family mediation redraws boundaries.

A mediator helps the family reach self-determination; the mediator's judgments can inhibit that process. Pathologizing a family system is to name its dysfunctions, to call it sick or well. Family systems are better conceived as falling on a continuum of functionality or dysfunctionality on a series of criteria, or hallmarks of adjustment: a) emotional balance and adaptability, b) contribution to problems, c) inter-member connections, d) problems solved without over- or under-involvement, e) dyads function without intervention, f) differences are tolerated or encouraged, g) all members interact in thought and emotion, h) no major secrets, i) members do not rescue members from their emptiness, j) positive climate more important than doing the right or popular act, k) each member relatively satisfied with family, and l) each member learns from others, but does not rely over-much.

Individuals within families change; attachment, differentiation, and codependency are features of individual change. *Attachment* concerns how and when social bonds develop. Early childhood attachment to stable, attentive caregivers is critical for child health. Attachment patterns, good or ill, persevere into adulthood. Change is possible. *Differentiation* enables a person to maintain separateness during emotionally-stressful events. Poor differentiation leaves half-selves in symbiosis. Partners seek similarly differentiated partners. Failure of differentiation may lead a parent to conflate his needs and those of his children. Lack of differentiation may lead to enmeshed relationships, or even an undifferentiated ego mass of several individuals, none of whom function separately. *Codependence* leads a family member to need the other's fragility, say, in alcohol- or drug-dependence. Codependence reinforces the problematic situation it seeks to address, and prevents change in the problematic person. With respect to individual change in families, the goal is to create a functional, healthy self for each member in relationship to each other member.

Triangulation stabilizes stressed dyads, but frequently does so in destructive ways. A mediator forms a triad with a distressed dyad, but avoids triangulation, that is, avoids taking sides or other relations that cut short the dyad's resolution of its problem.

Legacy is intra-family cultural patterns that may or may not support healthy family interactions. In conflict, members often express legacy issues from their family of origin, and may be quite unaware of alternatives. They need to see and choose new patterns.

Family *secrets* trigger psychological mechanisms for avoidance: denial, collective amnesia, projection, sublimation, minimizing, blaming victims, rewriting histories, blaming external factors, and generally avoiding personal responsibility. Moving away from these mechanisms may cause flooding, an emotional state during which the person cannot cope and is “swept away by the torrent of their own inner process.” Flooded persons cannot think and may be a danger to themselves or others.

Resilient people evidence high levels of insight, independence, relationship, creativity, humor, and morality. Resilient people seek reciprocity in relationships, negotiate conflicts successfully, and differentiate their needs from those of others. Resilient people tell themselves positive messages about their abilities, and resist negative input; they have strong sense of purpose, personal worth, and sense of meaning. A caring other who affirms a person’s efforts to cope helps maintain resilience for others. Mediators must bring hope to the negotiation, because people in conflict see their world negatively and project their negativity into the future. Mediator resilience can be disrupted by family mediation practice. The mediator may over-identify with the clients (counter transference). She may devolve to the client’s level of function, and reflect the clients’ hopelessness and despair.

Chapter 2: Understanding Family Conflict.

Family conflict is more intense than interest conflict, because identities are at stake, and even physical well-being may be jeopardized. The conflicts have four levels: 1) within the individual (questions of meaning and identity), 2) between persons, 3) between factions within the family, and 4) between the family and other persons or groups. Family mediators must map the layers of conflict for each person in the mediation.

Conflict resolution rebalances power by mutual accommodation, mediated revisions, or coercive approaches. Any resolution may leave gaps between expectations and realities, which rekindle disputes. A durable new balance of power must reflect the interests and capacities of the parties, and seem fair to all. Family conflict tends to be cyclical. Most de-escalate without intervention, but suffer the consequences of actions taken during conflict. Competent mediation helps rapid de-escalation with fewer consequences. All family conflicts contain elements of the following: a) information disputes, b) competition for perceived scarce resources, c) relationship conflicts, power imbalance conflicts, and values conflicts. Mediators should seek the “good enough deal,” in which losses are compensated by concessions on other issues.

The mediator may have to act as crisis intervenor before the mediation may commence. Crisis intervention may require strongly directive action. One crisis may be loss of intimacy, which the left-partner may clutch after the departing partner by conflictual negative intimacy. The left-partner’s theory may be “better to fight than be ignored.”

Family mediations confront much anger. Anger inhibits rationality. Once angry, a family member may not be able to think clearly for twenty minutes. The mediator should consider a break. Anger may flood sooner and last longer for those with pre-existing conditions (mental illness, PTSD, substance abuse). Ask the angry participant to rate their anger 0-5. Ask her to rate her level of anger control similarly. If anger lasts more than twenty minutes, the participant is self-stimulating anger. Address confabulated past issues, or call a break, or reconvene in a week.

Indignation is an aggressive response to shame. Indignation evokes indignation in the other. The vicious circle continues until parties express regret or apology and the bond between the offended parties reaffirmed. A mediator facing party indignation should acknowledge the source, create face-saving approaches, acknowledge the indignation and shame, grasp how the individuals’ systems interact, and create a secure

base for exploring the issues. The apology should be FAIR: facts stated, awareness of how the other feels and perceives the situation, impact on the other, and responsibility for the speaker's share of the problem and steps being taken to prevent future occurrences.

Hostility pervades some individuals. They expect negativity and thus elicit negativity, in self-fulfilling prophecy. A "malignant victim" feels that his injuries justify harming others. Reciprocity and kindness do not affect hostile persons, because their issue is an internal state, not an interpersonal one. The mediator should attempt to understand the psycho-pharmaceuticals being used by parties. The brains of people who have been violent show increased cognitive dysfunction, obsessive tendencies, angry outbursts, and anxiety/moodiness. Social interaction theory maintains that aggression is voluntary, a normal consequence of conflict, caused by situations and interpersonal conflict, and frequently invokes the perpetrator's fundamental beliefs about justice and blame. Predatory aggression differs from dispute-related aggression in that predatory aggression involves exploitation and demonstrations of power. Anger is frequently used to justify aggression. Society's rules about appropriate anger and response are not reflected in all families, which are divergent culturally. Aggression and hostility are not usually responsive to the normal controls in mediation. Social learning theorists posit that social interaction is the primary determinant of aggressive patterns, and so the patterns can be changed by modifying social patterns. Family mediators must be aware that mediation may injure parties if deep hostility and aggression are not properly identified, referred to psychiatric and psychological therapy, and managed differently from situational anger.

Families fight differently. Some avoid, accommodate, compromise, compete, or collaborate. Other indicators of style are amount of disclosure, power sharing, level of involvement, and flexibility. Spouses tend to mutually withdraw, accuse, or polarize. To intervene, therapists identify the problem as seen by each, acknowledge that the partners are in no-win situations, and construct a "joint, mutual overview" of the situation. A mediator should note of the participants their: relationship, power and conflict approach, communication, range of interaction, transparency respectfulness, balance and neutrality, the session's climate and whether the mediator effectively models the behaviors sought.

Negotiation in family mediation needs to pick up on the family's previous negotiation attempts, before seeking professional help. Most clients present "distributive" issues, in which mutually exclusive options are the only ones presented. "Integrative negotiation" functions in the belief that there need be no winners and losers, that bad deals are bad, that each person should get some needs met as well as a "good-enough outcome." Rate families for their communication skills: listening, speaking, self-disclosure, clarity, continuity and tracking, and respect and regard for others. The mediator must listen for the meta-message of potential threat language (black-white, urgency, passive voice, hyperbole, big words, assertiveness); it may be (or be perceived as) the "boss" reasserting his dominance. Cognitive biases may clog negotiation: dichotomizing (right-wrong), deprivation (feeling of scarce resources), and reactive devaluation (ignoring one participant because of past trust issues or other status). Frequently, families make a demand for change, but without changing the family power structure or rules. This is the first item to address in mediation.

"Face" is a person's claim to be perceived in a certain way. Challenges to "face" lead to defensive attempts to restore the image. "High context" cultures (Korea, Japan, China, Mexico) link all elements of a situation to face, which is a social issue. "Low context" cultures (mainstream North America, Australia, Germany) relate face to self-esteem, which is a psychological issue. In mediation, face-saving may be more important than the issues negotiated. As power shifts, the traditional roles and rules will shift, which affects face. The mediator should help everyone "save face." Face-saving is accomplished by sticking to hardened positions, suppressing the conflict itself, or self-revealing complaint about the wrongs to one's image that has been suffered.

Chapter 3: Family Mediation Models and Approaches. Mediation models specify a set of core beliefs and a theoretical base. A model answers "why." Methods tell us "how."

Stage Theory Model. Stage theory models describe family mediation as a flow through stages from beginning to end, with a strong guiding presence of the mediator from stage to stage. Some stages may loop back on themselves for specific issues. The stages are (generally): gathering information, defining the problem, develop options to solve problem, redefining self- to mutual-interest, and bargaining over options to agreement.

Problem-Solving Negotiative Model. If parties: 1) have vested interest in the outcome of mediation, 2) see collaboration as helpful, 3) have confidence their dispute can be solved by mediation, 4) seek common interests and not just make concessions, 5) believe that both sides can be simultaneously “right,” and 6) work to see other side’s perspective and reduce dysfunctional barriers (derision, defensiveness, and power differentials), then problem-solving/negotiation may work. If one party lacks any or all of these characteristics, it may not work. This is frequently the case.

Procedural Models. Like the court system, procedural models presume that if one follows the specified steps, a just result is likely to follow. Equal time, agreed rules, balancing of involvement are emphasized. This method does not work well for people who are impulsive or lack respect for authority or logical processes.

Therapeutic Models. Such practitioners assume that the individuals and family system must change before enduring agreements can emerge. The family is an ecosystem requiring: assessment, premeditative counseling and therapy, in-person negotiation, and finally follow up at six weeks post-mediation. *Assessment* evaluates post-divorce spousal functioning, parental functioning, resources, ethnicity, interpersonal context, court involvement, and marital status. Screening excludes the most difficult cases (about 20% of all screenees). *Premediation counseling* seeks to help participants accept realities, commit to mediation, gather information, improve communication skills, create safety, reduce dysfunctions, and remove blocks to outside assistance. *Negotiation* emphasizes mutuality to restructure the post-divorce family system, using reframing to emphasize mutual goals. Follow-up sessions attempt to prevent recurrence of dysfunctional patterns and avoid modification litigation. Other variations of therapeutic models are the Bowenian (active therapist involvement) and impasse-directed mediation, which addresses families with high conflict that is damaging children (used in conjunction with court-ordered processes).

Transformative Models. Transformative mediators seek to encourage deeper values in participants, while recognizing and empowering the parties. The focus of mediation is not necessarily the dispute in question, and resolving that dispute. Transformation is a meta-resolution model. By deepening the disputants, the dispute melts away. This model criticized “problem-solving” mediation as unnecessarily interventionist and meddling. Different attitudes characterize transformative mediation: empowerment and recognition, party choice, party competence in knowledge and ability, feelings are facts and need expression, exploring uncertainty has value and leads to clarity, present focus, past events affect the present, mediation is one step in a long attempt to cope with conflict, and small steps count. Since this approach is highly responsive to individual circumstances, it is difficult to train practitioners in it.

Narrative Models. Narrative mediation seeks change by developing a new story in which the parties live without their conflict. Narrative mediation emphasizes meaning over facts, listening for stories, distinguishing conflict-saturated stories from peaceful ones, conversation aimed at withdrawing from conflict-saturated story lines, creating a change-laden relational context, and telling a new story. Parties are encouraged to abandon the usual story (divorce is ugly, aggressive, competitive, harms children, drains one emotionally and financially, and awards children to mothers and financially burdens fathers) in favor of a story more healthy and amenable to their circumstance. The mediator asks reflective questions and emphasizes client self-determination. The mediator participates as co-creator of the parties’ new story.

Interactive Approaches. Mediation creates a new interactive system into which the parties’ old system is injected. Interactive mediators believe that changing parties’ interaction in sessions opens doors to changed behaviors between sessions. The mediator

focuses on events within sessions, letting them lead to a hypothesis of the conflict, to which the mediator responds as he deems appropriate. Interactional mediation presupposes mediator competence in base model of mediation, which base the interactional approach augments.

Neutrality Across Models. Models differ in understanding neutrality and intervention. Negotiative models prefer strict neutrality, with the mediator directing no outcomes. Transformative or narrative models inject the mediator into the problem, and demand involvement.

Eclecticism, Integration, and Personalizing Models. Mixing and matching techniques may create a confused conflict-resolution product. Techniques grow out of mediation models. Choose one, and evolve from that foundation. Problem-solving mediation and transformative/narrative mediations aim at different goals. The author begins mediations with problem-solving/negotiative approaches, and switches to other models if the initial approach bogs down.

Chapter 4: Family Mediation Skills and Techniques. Technique evolves out of the mediation model. Random aggregation of techniques can harm clients.

Case Assessment and Formulation. Assess cases by, in an organized manner, moving toward the personal center from the factual perimeter. Get the fact, then identify the relational dynamics, and then learn the persons involved. To assess the family system, make a detailed household map of the family and its history, as well as non-family influences, friends, governmental agencies involved, and critical events. Pursue the following: current residential status, current communication status, external stressors, financial arrangement among parties, emotional/behavioral problems present and past, level of commitment to family, differentiation, power imbalances, mutual credibility, role of dispute in each participant's life, mediator rapport with clients, readiness for mediation.

Determining Preexisting Conditions and Readiness. Does any participant have less than all his or her faculties available for mediation? Chronic disease, substance abuse, mental health issues, violence may be issues. The mediator must grasp the personal experience of each participant to know if that person is ready to mediate.

Evaluating the Problems to be Solved. Clients often have an initial identification of the problem to be solved. Careful questioning usually leads to redefinition or reframing of that problem, which should be checked carefully with each participant. The mediator may wish to seek the views of person outside the mediation. Other persons may need to be mediating. Any of these acts will expand the definition of the problem to be solved. The mediator must avoid being the family's evaluator, but must decide who should be in the mediation and in what order the mediation proceeds.

Shaping Client Sessions for Effectiveness. The mediator must maintain a safe and effective process. Mediations often end abruptly as one participant opts out. The author schedules mediations every two hours, with the actual sessions lasting ninety minutes. The first fifteen minutes review progress, gather new information, and inquire about changes since last session. The middle hour is broken into three twenty-minute sections, during which a topic is addressed. The last fifteen minutes summarizes the session, assigns homework, and outlines the next session. **FIRST PHASE.** Over the course of a mediation process, the first session or two of the first phase build rapport and trust, and define the problem(s). Following sessions (two to three) express feelings, work on participant communication, and begin bargaining. Reformulate the problem. **SECOND PHASE.** Sort what can be changed from what cannot. Each party should grasp and accept responsibility for the problem at hand. Each should want to do their part of changing to make matters better for all, not just themselves. At half way through the mediation process, the mediator should foreshadow the end of mediation. This gives a sense of progress. **THIRD PHASE.** The parties take responsibility and make personal changes. The mediator should reassure the parties that their work is important and the changes are needed. Construct the mediation sessions with enough time between them for parties to process the content, both emotionally and rationally. Keep the sessions

short enough to accord with physical and emotional comfort. If long sessions are mandated, break them up with time for reflection and recoveries. The mediator should not work harder than the participants. To create closure, write out the parties agreements. Where legal documents are the final product, also write out the non-legal, attitudinal agreements for the parties, or ask them to do so in their own words.

Mediating with Multiple Family Members. When many persons are mediating, the process can become cumbersome. One should consider teaming up with a second mediator, perhaps one who needs experience or one suited to identify with one of the critical parties.

Caucusing. The author calls caucusing “solo time.” Solo time can help parties save face, or give time for emotional or physical arousal to settle, or to coach the individual participant, or to confront a participant whose behavior threatens the mediation’s viability, or to resolve problems between one participant and the mediator herself, or for pre-testing a negotiative option, or for exploring a sudden shift, or for assessing major problems (abuse, violence threats). Concerns in using solo time: a) make some time for each participant, if having solo time with any participant, b) how information from solo sessions may be used (criminal or abuse allegations may surface in solo time), c) what will be shared in joint sessions regarding talk from solo time, d) threats of triangulation. The author notes that some principled mediators refuse to employ solo time, but that she uses it in moderation to ferret out allegations of violence or intimidation.

Power Balancing. Power is exercised in families by offering rewards, threatening punishments, or by inducing agreement. The mediator must evaluate family power to know if it requires re-balancing. Two paradigms of power predominate in families: 1) “power-over,” and 2) “power-with.” Power in families is fluid and compensatory. Power shifts from one to another occasionally, and where power exists, the holder gives other power to the submitter. No one is power bankrupt. People who feel victimized or left out make themselves a social load by passivity. This is codependency. Mediators often intentionally rebalance power by asking passive family members to stand up for themselves. Power mapping identifies who has what types of power and what power dilemmas exist. Mediators power balance by controlling the agenda or opening windows for participants to exercise new powers.

Neutrality and Client Self-Determination. Neutrality is defined by impartiality and equidistance as between parties. Mediators aspire to allow clients self-determination and to function neutrally, but bring their biases to mediation. Mediators function in a non-neutral manner by changing the course of dialogue between parties. Mediators also have a distinct view of good outcomes, and redirect participants toward better outcomes. The author advocates that mediators have a sliding scale of neutrality, move toward greater intervention as circumstances warrant. In any theory, neutrality means avoiding undue influence where the participants are unwilling to be influenced. When clients resist, let them self-determine. They must choose their outcomes and processes. Neutrality, at its root, creates equality of treatment and regard for all participants.

Transforming Impasses. What constitutes impasse depends upon the goals of mediation. Often it is best to view mediation as an opportunity for participants to state views safely, to listen, and to see they can work together. Often impasse results when participants change their rules as much as they can tolerate. The process will only go further with external sanctions are imposed (e.g., by the courts). Impasses result from data, structural, interest, value, and/or relationship conflicts. Data impasses resolve when parties agree what data is needed, how to get it, and then involve a third party. Interest conflicts resolve by clarifying the interests, brainstorming, and seeking integrative solutions. Structural impasse resolves by changing time limits, reallocation of assets and use of them, and changing the physical and social environment of the parties. Value impasse resolves by agreeing to parts of life where each individual’s values will have precedence. Relational impasse resolves by deal with emotions, grasping the other’s perceptions, and cutting off negative programmed responses. Success in mediation

concerns both outcome and process. A failed mediation is one in which the mediator's approach becomes the participants' problem.

II. Family Mediation Processes

Chapter 5: Special Case Issues. In cases involving domestic violence ("DV"), the mediator must prevent the parties from harming one another or involved professionals.

Control, Abuse, and Violence. The mediator seeks to create a narrative alternative to the tale of battle the parties rehearse. Eighty percent of mediated cases involve some level of DV. Taylor defines "abuse" as willful unwanted injurious contact with a person of a verbal, emotional, sexual or psychological sort. DV targets family members. *Problems with Power and Control in Relationships.* In DV, a family member feels authorized to dominate another. Frequent triggers of DV are isolation, anger/fear, challenge to the perpetrator, losses, and events threatening self-esteem. The abuser seeks, by his violence, to regain control. DV is not merely an anger management problem, which is situational. DV is a relationship with another person or persons. It is systemic. DV takes many forms, making it difficult to recognize: controlling actions, verbal, emotional, psychological, physical, sexual, mis-informational, or financial abuse. *Patterns of DV.* DV has patterns: male battering, female violence, male control violence, separation/divorce trauma, mental illness/drug and other pathological responses. The Academy of Family Mediators contemplated, but did not adopt the following criteria (See Appendix B): Mediators without DV experience should not accept mediation referrals. All mediators should decline to mediate where negotiation cannot proceed without fear or duress. DV itself should not be mediated. Mediators must provide a safe environment for all involved in mediation. Screening is critical. Initial screening must be conducted separately. Screening should continue throughout the mediation. Informed consent requirements are higher where DV is present. The mediator should be trained about DV. Do not mediate the fact of DV. Do not support trading non-violence for compliance. Make rules to protect victims, such as separate entrances and arrival/departure times. Use separate meetings as needed. Consider co-mediating with male/female teams. Balance power between the parties. Permit a support person to attend. If violence threatens, terminate the mediation. Develop cultural sensitivity to the manifestation of DV in various ethnic groups. *The Need for Screening.* Girdner's criteria for court-appointed mediators are 1) Always: where there are no threats or violence and relatively equal power; 2) Caution: where power imbalances threaten coercion; 3) Conditional: where there has been past violence, threats, or intimidation. Proceed only with safeguards and specific controls in place; and 4) Decline: where there is violence, threats, or intimidation and the victim does not want to mediate. Assist victim with safety planning. *Screening Effectively.* Mediators should believe reports of DV. Victims frequently collude with abusers to suppress DV information. Meet separately with the parties, ask for self-reporting, and check court records. Every DV screening should include information regarding: severity, frequency, lethality and weapons, levels of contact, victim's ability to flee, safety plans, law enforcement contacts, and other associated crimes (stalking, harassment). Taylor additionally asks herself the following: do parties' stories correspond, are parties accepting responsibility, how resilient are the parties, how much have they involved others (children), is the DV normal to them, how does she feel about the parties now that she knows of their violence, can she recognize and control their losses of control, and is she ready to mediate this case? *Ending Mediation Without Harm.* Consider telephonic screening to avoid any situation where ending mediation endangers the victim or enrages the abuser. *Responding to the Challenge of Violence.* Taylor presents a DV screening form as Appendix C. Where DV has been present, the mediator should consider safe seating arrangements, immediate identification of threats and abuse, using a safety contract, using shuttle mediation in separate rooms, and allowing a support person to attend.

Mental Health Concerns. Avoid labeling and diagnosis, focusing rather on individual behaviors and results. Negative stereotypes of mentally ill persons are potent

and widespread. *Concerns About Power When Mediating Mental Health Issues.* Mentally ill persons frequently feel powerless. The mediator may have to actively balance power between the parties. *Diagnostic Labels Versus Functional Behavior.* Mediators should be aware of three major categories in clinical diagnosis: major *mental illnesses* (brain defects/imbbalances leading to a wide range of disorders, e.g., schizophrenia, bipolar disorder, psychosis), *adjustment reactions* (exaggerated responses to situational stresses), and *personality disorders* (dysfunctional relationship to all aspects of life, leading the person to be distrustful and litigative). *The Dynamics of Depression.* Depressed persons are less able to remember information and negotiate, parent, and mediate. They are more likely to harm themselves or others. Depression is treated by medication and talking therapy. The mediator may need to delay or terminate mediation if a depressed party cannot successfully negotiate. Where the mediator has questions about a party's mental illness, the mediator should refer to a physician or psychiatrist. *Determining Appropriateness of Mediation.* Consider getting signed release to consult with the person's doctors. Recognize that mental illness can make mediation seem laborious or untenable to all involved. Ask oneself questions: can the person track information, does the person have a power shortage, can the mediator avoid diagnosis and talk in behavioral terms, does the person need an advocate, what are the beliefs of all parties about the mental illness, is the person on medication, will the mediation add to the person's stress, is the person seeing a therapist, and does someone in the system have an interest in keeping the person "sick"? Any agreement emerging from a mediation in which mental illness is involved should include contingency plans for the person's relapse or incapacity due to the illness. *Developing Accommodations.* Some child development specialists recommend limited contact with the mentally ill parent, or supervised contact. Some person needs to verify medication compliance if the parent is mentally ill and unstable or newly stabilized.

Child Abuse. Child abuse allegations put the mediator between bad faith use of such allegations and a child's safety. *The Mediator's Decisions and Role.* Mediation where there exist child abuse allegations are unlikely to succeed. Robert Benjamin recommends mediations of many individual sessions with reports to the non-attending participant. Brief objectives allow for doubt to creep into the participants, so they can make incremental changes without hardened positions. Avoid labeling and diagnosis/pathologizing. Allow the parents to control things to the extent of the child's safety. *When Allegations Are Made During Session.* Tell parties that mediators are mandatory reporters of abuse allegations before sessions begin. If child abuse is alleged, make the report. Such allegations can impair a mediator's impartiality. When allegations of child abuse emerge in sessions, making a report allows CPS or other agencies to determine what happens next. *Some Important Reminders.* Never allow an abuse allegation to be bargained away, as though never made. Make a report. Put the mediation on hold, until government agents decide who has authority to make decisions regarding the child. *Revelation During Caucus or Solo Session.* If an accusation emerges during session, the top priority is ending the session in safety. Knowledge of the accusation is likely to enrage the accused. Take precautions. *Assessing Safety.* Mediators may wish to consider using a screening form for child abuse allegations. *Reporting Abuse.* Questions to be asked after report of an allegation of child abuse: what to do if the abuse resurfaces after being purportedly abated, does the mediator have sufficient empathy and rapport to continue, and will the mediation do harm by allowing the parties to deny or escape the previous abuse? Even the reporting party may be unable to resist the abuser in the long haul. If one cannot mediate, then make a referral for other interventions.

Framing Agreements for Special Issues Cases. "Come in the back door" to frame agreements concerning special issue cases. Directly naming the problem may prevent agreements, but accepting the problem as a fact and making an agreement concerning it, without naming it, may work. *Focus on Functioning, Not the Label.* Address the concerns. Do not label. Avoid demeaning exchanges. People do recover from their substance abuse, violence, mental illnesses sometimes. *Writing Up*

Agreements. Do not label or point fingers. Address behavioral agreements. Remember to acknowledge the things that parents and parties are doing or have done right. *Basing Parenting Plans on Special Conditions.* Special condition parties are likely to need limited parenting opportunities. The factors to be considered are: 1) child's age and developmental capabilities, 2) attachment between the child and parent, and 3) the parenting skills and circumstance of the special conditions parent.

Chapter 6: Ethics and Standards, Confidentiality and Privilege. *Ethics and Standards.* Diverse and sometimes inconsistent standards of practice govern mediators. A fundament of ethical principles remain stable amid the rapidly changing standards for mediators: 1) Do no harm to clients, 2) Try to do good on clients' behalf, 3) Be fair and promote justice, 4) let the clients self-determine their outcomes, and 5) keep your promises, both formal and informal. Most mediators hold "client self-determination" as their central principle. Self-determination includes freedom from coercion, freedom to choose, informed and reasoned choice, and choice in light of moral considerations. Attorney mediators have some special disclosures that must be made: a) nature of the mediation process as compared with other processes, b) specifics of payment, c) client responsibilities in the process, d) opting out, e) the specific methodology to be employed, f) confidentiality and its boundaries, g) the role of impartiality, h) any conflicts of interest, and i) the need for full, transparent disclosure of relevant information. Mediator and lawyer ethics deviate at important points. The various mediation models have different ethical standards. Some ask clients to just march through the process. Others ask clients to shape both process and content. When a mediator confronts an ethical conflict, she should: A) identify relevant principles applicable, B) imagine the actions the mediator would enact in each course of action, C) specify the steps involved in each approach, D) acknowledge your preferences in outcome, E) consult another mediator, F) review pertinent ethical standards and laws, G) check your own feelings again, H) choose, documents, and act, I) review the choice, and J) share what you learned. The ABA has created Model Standards for Family and Divorce Mediation (August 2000), which may become foundational. Mediators face recurrent ethical challenges: 1) switching roles. If permissible, would it be helpful? Many non-attorney practitioners are concerned about moves to limit family mediation to attorneys. Mental health/social worker mediators are tempted to cross the line into therapy. Concerns about crossing lines in mediation sometimes cause practitioners to fail to use their knowledge to the clients' benefit. Giving information is not legal advice. Sharing psychological knowledge is not therapy. Always give clients the benefit of your knowledge and experience. Avoid arrangements in which the mediator serves more than one role with clients at a time.

Confidentiality and Privileged Communication. Mediation participants have a reasonable anticipation that information and documents exchanged will not be communicated to outside parties. Exceptions apply: reporting elder and child abuse, threats of harm to self or others, information requests from other agencies or professionals working on the clients' matter, discussions with interns, supervisors, and other staff members who need to know something, scientific research disclosures, and upon suit against the mediator by a client. If a threat of harm arises, report to police and warn the victim. Mediators should have predetermined procedures for addressing threats and medical emergencies during sessions. Inform clients if the mediator will be discussing their case with colleagues, researchers, or interns/supervisors. Get written consent. If a communication is privileged, court process cannot compel its disclosure. Even cherished privileges (attorneys, doctors, priests) are subject to exceptions. Mediators have sought privilege for their communications. Some states have granted this, but the overall picture is a patchwork. A Uniform Mediation Act may help. Given the dynamic circumstance of mediation standards, mediators should pay close attention to developments.

Chapter 7: Cultural Issues in Family Mediation. Culture becomes the lens through which one sees the world and which forms one's identity. Members and groups interact to shape their social systems and individual identities within those systems. Mediators must take the cultures of their clients into account in their mediation process. A person's cultural affiliations may be multiple and remain fluid throughout life. *Family Culture.* 75% of children will have more than one family during childhood. One-third of all mothers are unwed at the child's birth. In some cultures, a majority of the birth mothers are minors. The shape of the family is rapidly changing. *Gender and Sexual Identity.* Gender and sexual orientation play large roles in family disputes. *Class and Racial Identity.* Social discrimination on the basis of race and class grow from a complex interaction of poverty and historical precedents. We must not blame victims and must provide empowerment to the discriminated-against individual. Mediators have their own professional culture, which may be much at odds with the cultures of the people for whom mediation is provided. This can alienate the clients. *Assessment of Cultural Factors.* Irving and Benjamin list six factors to assess in cultural background assessment: 1) social class, including education and income, 2) family definition, 3) life cycle stage, 4) expectations about marital relations, 5) parent-child relations, and 6) views of the propriety of expert involvement (mediators, for example). Taylor adds to this list: 7) views on what constitutes timeliness, 8) the urge for social mobility, 9) family hierarchy, both interpersonal and generational, 10) emotional or psychological states, 11) language, 12) culturally-determined stress responses, 13) communication patterns, 14) migration and acculturation issues, 15) face and face-saving, 16) cultural view of pain and mental illness, and 17) views about God's involvement in problems.

Cultural Entitlement Beliefs. Cultures entitle different persons with prerogatives and entitlements. The mediator must take care not to import cultural assumptions into the mediation. *Cultural Differences in Interactional Patterns.* Mediators who are willing to build in some adaptation in their models should be able to meet mediation needs of persons not of the mediator's culture. *Identity, Adaptation, and Assimilation.* Younger family members of immigrant families adapt to their new culture and language faster than older members. Reliance on the skills of young members may create a burden on those children. *Misunderstanding the Basis for Dispute.* Immigrant families may attempt to maintain their former patterns, resisting assimilation. Us-them conflicts arise. These are identity-based conflicts. *Assessment of Cultural Transition.* Immigrant families integrate into their new culture at different paces. A mediator should consider co-mediating with a bicultural assimilated person when assimilation is in its early stages. *Mixed Cultures Within a Family Unit.* Assimilation issues are complicated by cross-cultural marriage. *The Mediator's Cultural Perspectives.* The mediator should ask himself and his clients about their comfort and understanding of the assumptions of mediation (equality, fairness, neutrality, self-determination) and the role their cultural background may have on the process. Does a client need adaptation of the process or a different mediator?

African American Families in Mediation. African Americans are over-represented in the criminal population and under-represented as mediation parties and mediators. The African American community has avoided professional intervention, preferring to handle its disputes informally or within churches. The community views mediation screening as intrusive, and a possible source of discrimination. Mediation is an American "white box." Irving and Benjamin found that multiple problems in African American may indicate a need to revise the black family structure. Upward mobility cuts some of the social supports usually available to African American families. *Power Dynamics and Emotional Expression.* Many black families accept a domination theory of power, and reject a power-with theory. Mediation itself can become an issue, because no one person can order it. Heightened emotionality and profanity characterize some black language. Mediators unaccustomed to these cultural characteristics may want to hire a co-mediator with knowledge of the culture. Attempts to over-control the expression in mediation may result in sham compliance. *Black Fatherhood.* Black fathers frequently lack the cultural heritage, finances, and role models to parent well. They may be unresponsive to suggestions of therapy, parenting classes, and other

interventions. Attaching such fathers to good role models within their own culture and emphasizing the importance for the children of a change in parenting pattern may be of greater utility. *Biracial Couples*. Biracial couples frequently misinterpret the behaviors of the partner, since each emerges from a different culture and set of expectations. *Reflecting on African American Families*. Non-black mediators should question their ability to meet the needs of African American families. *Case Example: Hairbrushes and Grandmothers*.

Hispanic Cultural Themes. Hispanic culture is diverse. Nevertheless, Hispanic cultures tend to be “high context” cultures with noticeable trends, including: cooperation, sharing deference to older persons and their authority and wisdom, as well as a relaxed view of punctuality, imperative loyalty to family, and emphasis on right conduct as a means to preserve honor. Hispanic families tend to be open laterally, with grandparents and godparents exercising authority. Extended family obligations often override direct personal interests. *Respect, Warmth, and Indirectness*. Cultural concepts affect mediations: 1) *respecto*. The elderly and persons in authority receive deference. 2) *personalismo*. Degrees matter little. Hispanics want to know the mediator’s personal warmth and something of the mediator’s family and interests before trust emerges. 3) *simpatia*. Direct conflict must be avoided. Hispanics may be inclined to express agreement even when they disagree or misunderstand. They use indirect approaches to conflict resolution, and value control of aggression. Mediators may need to use individual sessions, and indirect communication patterns to achieve resolutions. Hispanics have traditions of *machismo* (early male sexual activity) and *marianismo*, the requirement that girls remain virgins. Early childbearing is normal. Marital relations tend toward male authoritarianism. Children are expected to obey parents, especially fathers. Child, mother triangulation often emerges. *Adaptations for Mediating with Hispanic Families*. Suggestions for greater success in mediation: a) translate all documents, b) use interpreters or bicultural professionals, c) provide an orientation about children and domestic violence, d) address the participants formally, e) start each session off topic to establish rapport, f) meet participants separately, g) maintain respect, h) interview children only after getting both parents’ permission, i) use storytelling, and j) use outside services such as the church and godparents. Consider bringing in the entire extended family for conference. Work hard on personal involvement. Work slower.

Asian Perspectives. The term “Asian” includes so many nations, cultures, and religions as to be meaningless. Some generalities: A) Asian family members tend to acculturate and improve economically because the culture emphasizes education, achievement, and hard work. B) Families are hierarchical and have reciprocal duties that are taken seriously. Harmony is emphasized and self-assertion and conflict is problematic. An independent shuttle by a respected person may allow harmony to be restored. C) honor/shame, duty/obedience, and elder authority dominate. Fathers rule; mothers nurture both father and family. The eldest son rules after the father passes. D) Women must communicate indirectly, which can make fairness difficult to achieve. E) Asian cultures view time differently, see problems as interconnected, and tend to defer decision until late in the game. F) Zen nonaction and Confucian rites emphasis place Asian families in mediation farther into conflict than most other families would tolerate. Since the families tend to collaborate, a mediator will need to question individuals in caucus to determine whether there is actual acceptance of solutions. G) Mediation is likely to fail without the support of the elder males involved. Avoid being an expert for the family. Female mediators may have difficulty establishing credibility with the elder males. *Adaptations for Mediating with Asian Families*. 1) Begin by checking with community elders about the problem. Involve them. 2) Co-mediate with a respected elder (paternal grandfather or grandmother) and let them give advice.

Gay and Lesbian Families. Homosexual families are a culture of their own, despite sharing the dominant culture. These families may be formed without legal approval, may be discriminated against, and may be in social and physical danger. Some themes emerge for lesbian couples: a) intense intimacy in lesbian relationships may entail enmeshment. Many lesbians remain friends after their relationships end. b)

Lesbians, as women, deal with conflict indirectly and redirect anger internally, sometimes leading to self-harming behavior. c) Lesbian couples express domestic violence and fighting in the same proportions as do heterosexual couples. Themes emerge for gay couples as well: i) Gay couples deal with prejudice, risks of exposure, and identity formation. ii) promiscuity in one or both partners can endanger the relationship, iii) childless relationships can tend toward one partner being parental and the other needy, iv) children of previous heterosexual relationships or sperm donor relationships abound, v) the research does not support the idea that gays or lesbians are less fit parents than heterosexuals, vi)

Ethics and Practice Standards for Cultural Issues. Family mediators must recognize their own limitations and competencies in developing cultural awareness. Mediators should diminish discrimination, bias, and oppression in themselves and in the culture at large.

Chapter 8: Interfacing with Other Professionals and Parties. Other professionals and outside parties can damage mediations with bad advice or inappropriate interventions. Mediators should retain connection with these persons, redirect them, involve them to the extent their involvement assists mediation, but set strong boundaries for their interactions with the participants. Maintain connections, but preserve boundaries. *Continuity-of-Care Continuum.* Mediation lives on the line between social services and the litigation system. Mediators should make appropriate referrals for services beyond the scope of mediation. A “360 degree service delivery model” sees mediation as one of several services that may be needed by higher conflict or dysfunction families. Taylor asserts that family mediators should not merely make referrals, but rather explore the client’s needs, prioritize those needs, search out appropriate referrals to services, apprise the client, and supervise the client’s utilization of the resource. The mediator becomes a case manager. *Involving Children and Other Parties.* Many persons other than the participants are affected by mediation outcomes. A mediator may wish to involve those persons (e.g., children, step-parents, grandparents, significant others). If a mediator does so, the rules for the involvement of these others should be thoroughly worked out beforehand. It is frequently best to involve children by mediator interview, rather than direct attendance. Mediators must clarify, preferably in written release of information forms, the boundaries of confidentiality and confirm that any written materials from the involvement of others shall remain part of the mediation process, and not be used in subsequent litigation. Mediators should thoroughly discuss the benefits and risks of involving others before any such steps are taken. Children should be involved if: 1) a child is said to have a strong preference, but there are questions whether this is the child’s or the reporting parent’s view, 2) when a child asks to speak with the mediator, 3) when a child is willing to confront his parents’ about the effects on him of their ongoing hostility, and 4) when adolescents are involved. Mediators involving children should be asking what information they seek, what rationale warrants the risk of speaking with children, how can the mediator tell if the child has been coached by a parent, how will the information be used. Mediators may want to interview children who live together as a group, which gives opportunity to observe their social interactions. The child should be asked about what can be shared with his or her parents, to give confidentiality to the child. Group child sessions should be at least ninety minutes long, to give time for each child to express her thoughts. Start reports to parents with objective information and quotes from children, to emphasize the information gathering aspect of the child interviews. Since the input of any third party can change the parties’ view of the matter, the mediator should be prepared to help them adjust their narrative about the conflict and what is needed. Paying for mediator time to do child interviews is frequently a source of further dispute. *Working with Advocates and Attorneys.* Participants seek advice before mediation. Attorneys should let clients speak for themselves, and should “put the case on hold” to let mediators work. Some attorneys accompany their clients to mediation sessions. Some doubt mediator competence, but most attorneys like mediation for its good effects. Mediators who are not lawyers must be concerned about unlicensed

practice of law. The best advocates of mediation participants prepare their clients about what questions to ask, what topics are needful, and what sorts of solutions might be best. But they let their clients do the work and the talking. *Individual and Marital Therapists*. Referral to therapists provides expanded continuity of care for mediation participants. Get a release of information and tell therapists about the mediation efforts, if the therapy is ongoing.

III. Specialized Practices in Family Mediation

Chapter 9: Marital Mediation, Conciliation, and Prenuptial Agreements. Conciliation considers the strengths and weaknesses of a relationship and the conditions under which a partner might be willing to remain in the relationship. Conciliation amounts to mediation because it uses the same processes, but with the different goal of preserving the marriage. Divorce mediation helps separating partners communicate in making emotional, financial, social and parental decisions needed to make a mutually advantageous parting. Mediators often oscillate between divorce mediation and conciliation, as the couple negotiates. When oscillating, the mediator should make clients aware of the switch. *Marital Mediation Assessment*. In assessment of mediating partners, both the partners and the mediator must determine whether the parties are ready to divorce, and under what conditions might the parties reconcile. Few partners have openly negotiated the rules and expectations of their relationships. A mediator should help partners sort their dispute into interests, capabilities, and credibility, aimed at the couple's intimate personal relationship and their parenting. Kayser argues that all transitioning couples go through a similar progression: disillusionment, followed by anger, followed by disengagement. Conciliation mediation may take less time than traditional therapy, because mediation does not require rapport building to the same extent. The initial marital problems acknowledged by parties frequently mask deeper underlying problems. If couples are unwilling to redefine the problem to address the deeper issues, mediation may be inappropriate. Mediation can inappropriately support the denial of deeper psychological issues (sexual addiction, incest, sex abuse, eating disorders, OCD, and other mental illnesses). Mediation may be appropriate to address the conditions under which the spouse will remain supporting during treatment. *Themes of Attachment, Love, and Trust*. "Anxious attachment" describes couples who cannot stand to be together or apart. Anxious attachment often derives from early experiences in life or the relationship. The insecure attachment may relate to dubious foundations of the relationship, formed by needs other than relating at the outset: a place to live, sex, or fleeing another circumstance. Mediators can ask the couple to review the formation of their relationship in front of one another. Often their stories diverge substantially. Such couples need trust. Trust is mediable when it is defined in concrete behavioral terms to which the parties may agree. *Defining the Relationship by Agreement*. Parties may not have discussed what marriage means. Mediation can help them define their "us" by reaching agreed understandings. Common topics are no-negotiation issues, decision-making, communication, work and money, parenting, household tasks, role of friends and hobbies, in-laws' roles, and former relationships. *Creating Appropriate Consequences*. All people need nurture, stimulation, and structure throughout their lives. Ill-conceived actions have natural consequences; they also have human, logical consequences. Couples should erect consequences for violations of their marital agreements. The mediator can help couples do so. The best consequences are known, progressive, and logical. Such consequences help partners have alternatives other than misery or divorce. *Prenuptial Agreements: More Than Money*. For most people, the relational dynamics of their marriage are more important than their money and financial legacy. Prenuptial agreements should, therefore, address their relational realities as well as financial realities. Prenuptial agreements are really prepartnership agreements. Taylor contemplates that partners might wish to negotiate both the relational and financial facets of their partnership, and then include the extended social sphere as well, for purposes of education and standard setting.

Chapter 10: Divorce Mediation. Divorce is the most-mediated type of dispute. A divorce mediator needs competence in conflict resolution, mediation, legal and financial analysis, human development with special reference to non-majority populations, and basic professional skills, (interviewing, referral, case management, collaboration with others, documentation, and social relations). *The Divorce Mediator's Role.* Divorcing partners seek mediation at all levels of conflict. The mediator facilitates conversation, brings creativity to problems, negotiates as a third party, mirrors participants and provides more objective observations, acts as communication link when parties cannot talk. *Mandatory and Voluntary Mediation.* Couples referred for mandatory mediation often resist the process. Couples voluntarily seeking mediation are more open. Both have basic rights of self-determination. They can terminate mediation. Mediators need to resist outside pressures to control how they mediate. *Married Versus Unmarried Separations.* Non-marital couples with children may have quasi-marital commitments to one another or a commitment to co-parenting only. Frequently non-marital couples with children are unaware that they need parenting plans, and some do not know each other well. Mediators must determine the level of emotional involvement between the parents. Once clarified, the usual issues pertinent to divorcing parents follow. The author considers case studies of partners with little knowledge of one another and gay and lesbian separations. *Complete Divorces or Parenting Issues Only.* The author argues in favor of non-lawyer public divorce mediators framing financial settlements in dissolutions. *Starting with Parenting Rather Than Money.* The author recommends starting with parenting and child support issues, before moving to division of assets and liabilities. If parties cannot mediate successfully on parenting issues, it is unlikely they will work through the financial matters. *Universal Themes in Divorce and Separation Cases.* Five issues predominate: 1) ending the relationship (some partners have not made a firm decision to separate), 2) defining what ends (the personal or sexual relationship) and what continues (co-parenting), 3) finding new lives (jobs, friends, new partners), 4) making time-delimited short-term changes, and 5) making long term changes. *The Crucible of Conflict.* Separating couples will recreate their dysfunctional dynamic in a mediation session. This moment offers the best opportunity for change. The couple does what it always does; the mediator intervenes by naming and reflecting what happens. *Describing A Case Using An Interactive Model.* The author describes how she runs a divorce mediation. Each session is less than six sessions of sixty to ninety minutes each. Focus on process and content, but process precedes content. No good agreements arise from deficient process. Ask: are participants' or children's needs predominant?, are they acting in old patterns?, what might be persuasive to each person?, are there deep principles involved or only preferences?, is power balanced?, and what help does each need to hear the other? **SESSION ONE:** Climate, Concerns, and Commitment. Get to know the participants and their problems. Give feedback on how they are interacting. Complete a written agreement to mediate. Apprise of standards of practice. Spend a few minutes with each to assess for domestic violence or intimidation, find out what they know, and dispel myths. Define boundaries between parties and with mediator. Have parties self-assess about their relationship. If either desires reconciliation, address this, and possibly refer out to therapy. Plan for temporary needs, set agenda for the next meeting, suggest reading, and end with solving a small problem. **SESSION TWO:** Refining, Reframing, and Redirecting. Ask what has happened since last session, and integrate that into the dialogue and agenda. Begin parenting issues: legal and physical custody, parenting schedule, extended family access, holidays/birthdays/vacations, telephone/email, relocation, transportation, discipline, substitute care, activities and friends, introducing new sexual partners. Give homework assignments on any dispute issues. **SESSION THREE:** Crisis, Climax, and Denouement. Often, the conversation shifts to deeper values and how the parents treat one another. Shift from problem-solving to narrative mode, inviting each to discuss their and their family system's unmet needs. Refer out for individual therapy as needed. **SESSION FOUR and Beyond:** Change and Decisions. The mediator gives constant feedback to

participants to help them hear one another, moving between substantial issues and procedure. Mirror participant input and shape the conversation. Refocus participants on what they want to change, rather than what they want the other party to do. The “stuck spot” is exactly the point where the participants’ system needs growth. If they can, the participants develop a new model of interaction. The following sessions are content-laden, and employ the new interaction approach. If parties cannot reach this point, they may leave mediation. The mediator must support what can be changed and acknowledge what cannot be changed. When parties lapse into old patterns, the mediator makes the parties aware of the change. Record all agreements and failures to agree as well. If parties are unreasonably demanding, unfair, or insist on unworkable agreements, the mediator may need to terminate mediation. *Integrating Children Into The Process.* The voice of children may not be heard in mediation. One may interview them and bring them into the dialogue. There are dangers. Parents may ignore the children, or punish the child for disagreeing with the parent. But the child’s voice may help. To interview children, get written permission of both parents, get clear on what questions need to be answered, answer whether the parents will respond appropriately, what harms are being risked by the interview?, is your meeting room equipped for children?, self-reporting forms age graded?, what is your comfort level interviewing children?, do you have referrals for child therapy if needed?, and do you have clear agreements about what will and will not be told to the parents? *Post-Divorce Concerns and Modifications.* Post-divorce problems or changes may require changes to the mediated agreements. Many financial, social, and parenting pressures emerge after divorce which stress the new status quo. Ask whether the new problems are the real issue, or the participant is falling into old patterns of “negative intimacy” with the former partner. The litigation options post-divorce are often limited. Mediations post-divorce often proceed faster than the divorce mediation. Get a post-dissolution history, and watch for high-conflict persons, parental alienation behaviors, and other serious harms. When new partners have joined the original parents, most often all the new partners should join the mediation as well. The new partnerships may have rifts that complicate negotiations. The parents may be struggling with their new roles, while staying in the co-parenting relationship. Watch for abuse issues; mediation is inappropriate under such circumstances. Individual sessions may expose intimidating behaviors.

Chapter 11: Parent-Teen Mediation. Parent-teen mediation addresses typical problems that develop in family systems during one or more members’ adolescence. The young person’s life course can be affected, and the teen may choose high-risk behaviors where resolution of the difficulties is not forthcoming. Common problems are conflict regarding household rules, discipline, identity, sanctions for ill behaviors, drugs/alcohol, dating, friendships, blended family relationships, criminality, major life choices, pregnancy, risky sexual behaviors, self-mutilation, and suicide. These conflicts have power and control at their core. **The teen must self-direct and differentiate from parents. The family system’s task is to facilitate the teen’s independent self-concept while maintaining the teen’s safety, parental involvement and connection to the wider family.** Negative parenting styles may emerge, often characterized by negativity, overprotection, or indulgence and criticism. A mediator’s role is to assist the participants in understanding the dynamic and address needed change. Mediators should avoid defining the problem as the teen’s. Frequently, a teen’s problem is an attempt to address a larger familial dysfunction. *Service Provision Considerations.* Elements of parent-teen mediation to be considered: solo caucusing, involving a co-mediator teen, power balancing in the parent-teen relationship. Parent-teen mediated written agreements have a fifty percent rate of noncompliance by at least one or more family members. *Power Dynamics During Sessions.* Power differential necessarily exists between parents and teens. It is structural. Mediation failure affects teens deeply, with sanctions imposed, but affects the parents only slightly. There are no sanctions on parents for failure. Mediators must maintain strict neutrality to assure the teen of impartiality so that the teen participates fully. *Speaking Naturally.* The teen participant should be allowed to speak

as is his or her custom. This may involve tolerating cursing and vulgarities that the parents are loathe to tolerate. Mediators should not attempt to align with the teen. Stay neutral, and assure the parties, including the teen, of respect and nonjudgmental listening in an ethos of equality. Practice Dimensions. Parent-teen mediation is a niche practice. Most mediators should learn the process, but will be unable to make a practice of such mediations. *Classic Parent-Teen Mediations:*

- *Pam and Suzie.* Suzie is a rebellious early teen. She has lied to her mother to stay out late to meet a forbidden boy. Pam seeks mediation, to which Suzie consents. In a single mediation session, Pam expressed her fears concerning Suzie, and Suzie told Pam about her shoplifting, deception, and other problems behaviors. Both agreed to work toward more open communication. They made a family dinner time weekly to talk.
- *Sequential Family Mediations: The Kents.* Kents' daughters, Chelsea and Zoë, suffered Kents' divorce. Chelsea, still a minor, did not want to spend time with her father, who believed the mother was alienating her. Family mediation turned to father-daughter mediation. In mediation, Chelsea convinced her father that she resisted visiting because of the lack of quality in their time together and father's inflexibility. Father and Chelsea made agreements, which the parents together in mediation subsequently ratified.
- *Victim-Offender Youth Programs: the Nguyens.* Sixteen year old Bruce Nguyen, did minor criminal activity as part of a Vietnamese gang. His grades suffered and he damaged a school neighbor's property during a gang scuffle. In mediation, the parents expressed their same over Bruce. Bruce told them how difficult his life was, needing to earn money, make top grades, and avoid the gang. The mediator put the family in touch with community resources, and the mediation negotiated a settlement with the injured neighbor who had Bruce help fix the mess he helped create.

Chapter 12: Adoption, Abuse, and Placement Cases. A *pot pourri* of cases fall in this category: dependency, parental termination, child protection, guardianship, foster care. These cases often involve non-voluntary legal actions, and involve fundamental family reorganization. All involve perceived loss of and detachment from some family member. Safety is usually at issue. The decisions made are often permanent and cannot be revised or revisited. Mediation goals include a resolution all parties can tolerate, and prevention of ongoing conflict. Three issues predominate: a) matching mediation model to a dispute, b) the extent of confidentiality, since some part of the proceeding is a public venue, and c) major power differences between the participants. *Fitting the Model to the Situation.* Often in these highly charged situations, the mediator needs to select more invasive mediation models than the standard problem-solving model; therapeutic, interactive, or transformative models may be required. *Confidentiality and Privileged Communications.* Some portion of the child-removal process will be public. Revelations of parental abuse may emerge in mediation, which must be reported. The mediation should not over-protect the parent client, but at the same time must make the mediation environment one of relative safety. This is the mediation conundrum in such cases. *Uniform Mediation Act.* Taylor discussed the evolution of confidentiality provisions in the Uniform Mediation Act, all trending toward balancing of privilege with reporting actual unreported abuse. *Power Dynamics in Placement Cases.* Hierarchical, "power-over" approaches do not work in mediation. Collaborative principles, acknowledging various forms of power and co-contribution to creative composite solutions, do work in mediation. Domestic violence screening is essential; missed DV can create an unspoken threat of future retribution. *Institutional Power and the Family.* Individuals involved in these cases often feel powerless over against the state actor. A mediator must often protect the accused parents from coercion by the state actor. Often mediators involve advisers and advocates to bolster the parental power perception. *Child Protection and Placement Cases.* Parents accused in CPS cases are often angry, even with the mediator.

Frequently, many parties need to be involved in a CPS mediation. The voice of children who are old enough to comprehend and have opinions should be injected into the mediation by some means. Taylor believes that mediation about children without the child's voice is unethical. *Determining Appropriateness for Mediation.* Not all child protection cases should be mediated. Only those cases with these characteristics should be mediated: no immediate risk to the child, every party has capacity to participate, voluntary involvement, privilege can be maintained, the case can be reported adequately, all parties have independent legal counsels, parties have interest in maintaining relationship, other options are less desirable than mediation, a negotiable conflict exists, power can be equalized, there is sufficient time to mediate, and specific issues have been identified. Solo sessions with each participant make large joint sessions more workable. The family restructuring mediations are often time-consuming, unpleasant, and financially unrewarding for private practitioners. *Adoption.* Adoptions come in types: the common unmarried mother giving up child to married couple, step-parent (adoption by partner of one biological parent), two-parent (adoption by two unmarried partners), and foster care adoption. *Common Adoption-Related Disputes.* Several issues are common to adoption cases: paternity, refusal by one parent to allow adoption, kinship care (a relative provides care to avoid adoption), tribal membership, disputes among the adoption participants, open adoption agreements, concerns about the child's health/behavior or the adoptive parents, maintaining adoptee's connections with biological family and siblings, transracial or cultural issues, conflicts between adoptee and adoptive parents, and contacts between biological parents and the adoptee. The mediator of adoption cases must have sufficient knowledge of all participants: the child, the biological parents, the adoption parents, and the state or private agencies. *Termination Prior to Adoption.* Termination of biological parents' rights and responsibilities precedes legal adoption. Termination ends grandparental access to the child, though grandparents may sue for separate rights [this last is inaccurate, at least in Washington]. Termination ends a parent's rights and duties of parenthood (child support, right to visit or parent), and the child's right to inherit from biological parents. State adoption laws differ, and federal law pre-empts the field in certain areas: native tribes, foreign children, federal agencies charged with child-related duties, interstate cooperation regarding adoption, removal of barriers to adoption based on race, color, national origin, and court decisions. Adoption mediators need to know both state and federal law governing the adoptions in which they are involved. Adoption, like divorce, is a legal proceeding with many non-legal ramifications. *Open Adoptions.* In open adoption, the biological and adoptive parents reach agreements about the ongoing involvement of the biological parents. This may smooth the adoption process and reduce future disruptions. Openness should be carefully evaluated. Disruption by biological parents can destroy an adoptive relationship. *Mediating Adoption Consent Problems.* In some states, fathers cannot initiate adoptions of their children; mothers can. This creates a power imbalance. Issues of paternity frequently emerge, with non-fathers being accused and fathers not being identified. *Case Example: Mediated Open Adoption.* Child Josh was misled by his mother to believe that her fiancé was his father. The mother had never told the real biological father of Josh's existence. She told the biological father, who agreed to adoption, but wanted limited annual visitation with Josh. By telephonic mediation, the parties agreed. The mediator interviewed Josh who approved the plan, so long as his mother's fiancé stayed his day-to-day father. This agreement was entered and the adoption was approved. *Case Example: Change of Consent to Adopt.* Biological mother wants more time with adopted child, after the fact. The dispute was mediated, and the biological mother relented. *Changing Expectations: Opening Closed Adoptions.* There is a trend toward state law permitting some form of contact between biological parents and adoptees to acquire knowledge of heritage and medical issues. A case example: teen mother chose African-American adoptive parents for her mulatto baby. The teen mother never saw the baby. When the baby reached age sixteen, she wanted to contact her biological mother, whose current husband resisted, concerned for their three young children. The adoptive parents supported their child, and the mother met with the

adopted daughter. The parties conducted solo sessions, and then a large group session. The child now moves easily between both families.

Chapter 13: Elder Care and Family Medical Concerns. Growing life span and medical interventions create growing numbers of families making care and end of life decisions, which may lead to family conflict. We cannot afford to litigate these disputes. *Mediable Disputes for Elders and Ill and Disabled People.* Disputes that may be mediated are: immediate care disputes, guardianship decisions, caregiver decisions, treatment decisions, financial decisions, discrimination concerns, and confidentiality disputes. These issues/disputes may exist between the affected person and family, institutions, or caregivers, between family members or extended family. *Issues of the Elderly Population.* Elderly persons have more contract disputes because they need services, and so have more contracts than most persons. *Power Issues in Medical Disputes Concerning Elders.* Power imbalance may arise for elderly and disabled persons. Disrupted relational histories, personality traits (introversion, rigidity, and so forth), cognitive issues, deficiencies in knowledge base, financial self-sufficiency, gender differences, age differences, stereotyping, and conflicts with institutions may generate power imbalances. To mediate, a participant must be able to: understand who the participants are, tell his story, understand the role of mediator, listen to and understand others' stories, generate solutions, assess those proposed solutions, make an agreement, and keep it. If an elderly person needs assistance in mediation, check the legal sufficiency of the documents granting that power. *Mediating Family Medical Issues.* With doctors and medical care providers, many disputes that are sub-legal may be resolved. For example, iatrogenic disease (caused by medical treatment), lack of trust, disrespect, medical errors, or financial issues may be mediated. *Mediating Adult Guardianship.* Many incapacity issues could be settled by family members, if recourse to the courts required or suggested mediation as a possible solution. Some jurisdictions are doing so. *Two Case Studies.* The author gives case examples of mediating an out of home placement for an aging parent, placement and medical treatment dilemmas, a post-procedure medical complaint, and the adult guardianship of a disabled sister.

Appendix A: Household Map.

Appendix B: Report of the Academy of Family Mediators Task for on Spousal and Child Abuse.

Appendix C: Control, Abuse, and Domestic Violence Screener.

Appendix D: Parenting Plan Rationale and Matrix.

Appendix E: Budget Sheet.

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