Mediators and Metaphorical Analysis: A Phenomenological Study and Integrative Theory of Family Mediators

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Abstract

Florida family court mediation programs are assessed predominantly with quantitative analyses. A phenomenological approach using metaphorical analysis has unveiled the unique experiences, rich descriptions, and meaning-making of a group of family mediators. Metaphors are considered to be representations of the mental models with which individuals see the world. They typically emerge instinctively and automatically, which make them significant forms of communication analyses. This study is stage two of a two-stage study. Stage two included phenomenological interviews of 22 family mediators and expanded on the earlier stage one study (Storrow and Georgakopoulos, 2013). Stage two revealed that court connected family mediators often described their approaches as being "unique" and private family mediators often expressed negative appraisals in the form of metaphors regarding court staff mediators. Six metaphorical themes emerged in the current study including the following: (1) control, (2) cognition / logic, (3) movement / change, (4) balance, (5) communication, and (6) gender. Together with stage one, this study reflected a contribution to the field of conflict resolution and analysis as it enhanced our understanding of court connected family mediators and allowed us to discover what perceptions were held by private family mediators. Implications of this study were provided.

Introduction

The state of Florida has a comprehensive system for certifying family mediators for court appointed cases (Florida State Courts Dispute Resolution Center, 2011). Florida Supreme Court family mediation certification includes training, observation, ethical standards, and continuing education. The mediation certification program of the Florida Supreme Court has long been acknowledged as a pioneer and model court connected program in the nation and around the world. This study is phase two of a two part study. Specifically this study explored the conflict metaphors of a group of family mediators. The reader is encouraged to review stage one of this complementary study, which was a qualitative content analysis of 85 statewide questionnaires. The earlier study set a foundation for the 22 phenomenological interviews in this research (Storrow & Georgakopoulos, 2012). The current study involved phenomenological interviews and expanded our understanding of the way a group of family mediators experienced mediation.

The metaphor is a fundamental way of making sense of life (Lawley & Tompkins, 2000). Debra Kolb's (1994) book, *When Talk Works: Profiles of Mediators*, used interviews to explore mediation styles across mediation fields. In this study, we limited the scope to court-based family mediators. Interviews captured rich descriptions of mediators' *lived experiences,* or what Dilthey described as the immediate, pre-reflective-consciousness of life (1985). Van Manen (1990) explained lived experience as, for example, when a teacher stands in front of a class it may be difficult for them to forget that children are "looking at them." However, the teacher eventually "forgets" the presence of an audience and becomes more immediately and naturally present in the activity. Setting and creating a comfortable, informal interview environment was essential in capturing the essence of participant meaning making in the phenomenological process.

Origins of Phenomenology

The origins of phenomenology can be traced back to Immanuel Kant (1781) and Georg Wilhelm Friedrich Hegel (1807). The word *phenomena* comes from the Greek meaning to *become illuminated* or *appearance* (Groenwald, 2004). Metaphors are not only linguistic tools used to describe, but they structure future perception and action (Lakoff & Johnson, 1980). In this study, the phenomenon of being a Florida family mediator was envisioned through each mediator's "life world" or human experience (Kvale & Brinkmann, 2009). Interviews were carefully crafted with openness, so we could support mediators in exploring their authentic orientations (Costelloe, 1996; Porter, 1995). In phenomenology, the process of analysis also resides in the concept of *epoché*. Epoché requires the elimination of suppositions, basing knowledge on intuition and essence, as opposed to empirical knowledge (Moustakas, 1994). We separated out the mediators' experiences from our own biases and assumptions by being reflective throughout the process.

Metaphorical Coherence

Metaphorical coherence is defined as perceptions that fit into existing metaphorical concepts (Lakoff & Johnson, 1980). There is a *systematicity* which, according to Lakoff and Johnson (1980), relates to the idea that metaphorical expressions are linked together through underlying concepts. Shen and Balaban (2000) demonstrated that in natural language there is little apparent coherence, but metaphorical coherence may be identified within a single discussion topic such as mediation.

In the book *Metaphors We Live By*, metaphorical coherence is seen as structuring our perceptions and understanding of the world, all while guiding our actions and decision making (Lakoff & Johnson, 1980). For example, as infants we may see liquid or formula poured into a bottle, associating the rising level of liquid as being good and the disappearance of liquid as being bad. Metaphors often emerge with positive or negative valences that have been formed from past experiences. They are reaffirmed each time we see an increase producing a good result, developing circuitry in the brain and eventually a habitual reaction. This meta-metaphor is applied to a variety of areas such as emotions, as in feeling *on top of the world* or being *down in the dumps*. According to Lakoff and Johnson (1980), world views are built upon conscious and unconscious concepts we hold. For example, holding a perception that *conflict is a war between*

two opposing sides or *successful mediation ends in settlement* becomes a natural association through socialization processes, dominant cultural narratives, and personal experiences.

Reasons to Conduct a Phenomenological Study

Judges increasingly refer complex court cases to mediation to achieve consensual, cost effective, and timely resolution (Phillips, 2001; Moore, 2003; Fisher, 1991). Divorce is a complex process and phenomenology can explore that complexity. There has been research comparing divorce stages to the Kubler-Ross (1969) stages of grief; therefore, divorce may be a stressful experience for parties. The rationale for this study was to explore family mediators' experiences from their own perspectives. Mediators play paramount roles when parties have difficult conversations about parenting plans, equitable distribution, alimony, child support, and everything else involved in family matters. This study focused on family mediators' experiences to better understand a mediator's impact, influence, and role within the family mediation context.

Goals of this Study

The three goals of this study were to (1) understand the mediators' essential natures, (2) discover practitioners' experiences within an institutionalized system, and (3) explore how mediators learn and integrate new concepts. As an existential phenomenological study, there was no attempt to fit data into pre-existing theoretical concepts. Our goal was to discover what personal theories-in-use mediators described when they were asked "what it is like *being* a family mediator?" We were open to the theory or theories that would emerge from participants' perspectives.

Literature Review

Phenomenological Research Design

Institutionalized forms of mediation have been criticized for fostering a less personal approach which could dehumanize the process (Alfini, et al, 1994). Phenomenology gave us the opportunity to explore essential human experiences of mediators in these institutionalized contexts, which led to the introduction of the research question - *RQ1: What is the essential nature of family court mediators?* Buber (1970) stated that when a culture is no longer centered on living relational processes, it freezes into the *It-world*. It is broken only by "intermittently eruptive, glowing deeds of solitary spirits" (Buber, 1970, p. 103). We wanted to understand how these mediators reaffirmed or challenged the mediation system. This unexplored area gave rise to research question two, which follows - *RQ2: What is the essence of how family court mediators practice?*

Patterns of metaphorical coherence mirror structures of relationships, organizations, and society (Turner, 1996). Metaphors answer the mundane through relational statements that emerge naturally and instinctively. Since cultural assumptions, values, and attitudes are not always concepts of which we are consciously aware (Lakoff & Johnson, 1980), research question three was constructed to tap into this unknown area and follows - *RQ3: How do family court based mediators perceive, predict, interpret, and apply their experiences to their personal and*

professional lives? Culturally influenced metaphors build coherent systems which are used to conceptualize experience (Lakoff & Johnson, 1980), so understanding how mediators interacted with their environment led us to the following research question - *RQ4: What metaphors do family mediators use for the mediation process and the system(s) within which they practice?*

Family Mediation Styles and Models

The study of mediation styles has been historically difficult to measure and conceptualize. Kressel (2000) stated that a mediator's style "refers to a cohesive set of strategies that characterize the conduct of a case" (p. 535). Two dimensions used to define mediator style are a mediator's *neutrality* and *normative style* (Greenhouse, 1985). Interestingly, although child-focused (CF) mediation is common in court based family mediation, child-inclusive (CI) family mediation is not. McIntosh, et al. (2008) found that the agreements reached by the CI group were significantly more durable and half as likely to instigate new litigation. We were interested in how mediators might accommodate or justify the court's institutionalized approaches, considering that other approaches may be more successful. According to Silbey and Merry (1986), mediator strategies or styles grow out of systemic assumptions about the nature of conflict, conflict resolution processes, and mediators' particular capacities and skills. These interactive influences led us to address the question – RQ5: *Do the mediators have ethical dilemmas or internal conflicts/challenges?* Court connected mediators do not function in a vacuum or in isolation, as they are part of a system that contains embedded institutionalized structures and powers. It was interesting from the onset of this study to see if mediators identified system influences on their mediation styles.

Critique of Past Methods

In a twelve year study by Emery, et al. (2005), comparing 35 mediation families and 36 litigation families, family mediation was shown to help parents see the need for cooperation regarding their children, even if this was not possible during the time of separation. Family mediation's most important contribution was that already contentious relationships avoided further adversarial conditions, such as going to court (Emery, et al., 2005). It is important to understand mediators' impact and efficacy since mediation skills may be valuable to many areas of society where conflicts abound.

Studies by Irving and Benjamin (1995) and Kressel, et al. (1994) indicated that the organizational setting, private or public, has had a profound influence on mediator orientation. According to these studies, private mediators used listening, whereas, court mediators focused on facts and issues. Debra Kolb's (1994) book, *When Talk Works: Profiles of Mediators,* used extensive qualitative interviews to examine the practice of mediation across several different industries. These in-depth interviews were among the most revealing descriptions of the variation of mediator styles and world views. These studies did not, however, analyze how these styles might emerge from individual or systemic metaphors.

Phenomenological Methodology and Rationale

Phenomenological research is rooted in the philosophical perspectives of Edmund Husserl (1983), as well as Heidegger (1962), Sartre (1958), and Merleau-Ponty (as cited in Creswell, 1998). Researchers have searched for essential, invariant structures or "essences," which comprise the underlying meaning of experience (Denzin & Lincoln, 2003; Cresswell, 1992). Our study was based on Heidegger's existential phenomenological approach and acknowledged the concept of mediator *being* as a relational one. Mediation may not be as one court mediator described, "a candy in a box of chocolates" – one of several equal process *choices*. It was interesting for us to explore if mediators acknowledged their relationships with systems, or for that matter, what forms of influence they conceived to impact their perceptions and practice styles. The voices of mediators as meaning-making agents were essential to this study. The proceeding discussion underscores the methods and processes that we undertook in this phenomenological study to bring light to mediators' experiences.

Methods and Processes

An "anti-method" approach with an emphasis on the researcher as the instrument is at the core of phenomenological study (Kvale & Brinkmann, 2009). According to Van Manen (1990), phenomenology cannot be used to prove that one thing is more effective than another. For example, phenomenology is not deterministic, so we cannot conclude from it that one mediation style is more effective than another (Van Manen, 1990). Our goal for this research was merely to transform the lived experience of this group of mediators into a textual representation of essence. The focus was to better understand the essence of *being* a family mediator from the perspectives of mediators themselves.

Participants and Site

Florida's family mediation certification structure and our long-standing experiences as local mediation practitioners made the state an appropriate research site. Participants were Florida Supreme Court family certified mediators with substantive experience. Of the twenty-two participants, thirteen were female and nine were male, a ratio similar to the demographics of all Florida Supreme Court certified mediators (Florida State Courts Alternative Dispute Resolution Center, 2011). There were twenty Caucasians born in the United States and two Hispanics born outside of the United States. Fourteen were married, three were divorced, one was single, and four were of an unknown marital status. The group's age range was approximately 33 to 80. This participant group was advantageous since individuals in the group had some similar characteristics and life events. We sought in-depth analysis of each individual, but explored a composite group understanding as well (Baker, et al., 1992). Mediators were not selected for the purpose of generalizing to others, but reflected the level of variation that exists within the certified group of mediators in Florida. This diversity was important in order to discover mediators' experiences within this group (Cannon, Higginbotham, & Leung, 1988). Mediators were treated as co-authors, co-creators, participants, and co-researchers. This shared, participatory role gave family mediators voice and authority to share their authentic stories.

Researchers

With our collective experiences of over thirty years of experience in the field of conflict resolution and mediation, we knew that we had to be reflective about our personal backgrounds and experiences because they could serve as either tools or swords. As such, we were mindful of our own personal biases and assumptions throughout the process. We made adjustments to our approaches, especially in the earlier phases when we constructed the phenomenological questions. We used "clean" or neutral language and constructed open rather than leading questions. In the course of the interviews and analyses, we bracketed our experiences regularly and consistently engaged in reflexivity about who we were and what we were asking and inferring. We regularly used skills associated with a skilled mediator such as checking-in, paraphrasing, and actively listening to our participants, and we did much the same when engaging in the textual analyses of the transcripts. It was helpful that we constructed meaning by honoring participants as meaning-making agents who we acknowledged as owning their realities, experiences, and narratives.

Data Collection Processes

Interviews

Data collection included approximately half hour, informal interviews in person or by phone. We recorded, took field notes, and then transcribed the data. We used a denaturalized process, focusing on metaphors and content, rather than accents or involuntary vocalization (MacLean, et al, 2004). Determining the number of interviews depended upon the quality and saturation of the metaphorical themes that emerged in analysis, along with established averages from past phenomenological research.

Analyses

Analysis included a double coding approach, a process in which two independent researchers compared results. We utilized Clark Moustakas' (1994) modification of the van Kaam method of analysis to explore our set of transcriptions. Analysis began with 22 original transcripts, with the goal of understanding the mediators' essential experiences. We "horizonalized" the data, meaning that every relevant expression for each individual was listed and assigned equal value (Moustakas, 1994). After all meanings were exhausted, we identified recurring meanings or "invariant constituents" for each participant in spreadsheet columns. Finally, the invariant constituents and their overarching themes were checked against the whole set of transcripts to see if they were compatible and relevant. The shared themes were referred to as the composite categories for the entire group. We continually looked to the part (individual's original transcript) and to the whole (group's shared composite themes) (Kvale, 2000). As co-researchers, we independently followed these steps, concluding with separate structural and textural descriptions and conclusions. At the conclusion of the double coding process, we reviewed the results and discussed discrepancies until we agreed with the placement of all items and amended themes into organized categories. As coders we placed most items in the same categories; however, when ambiguity surrounded the placement of an item in a category, we discussed the

item in order to reach an agreement on its placement. Categories that were the same or similar were merged and unique categories remained intact.

Ethics

Confidentiality was addressed in the study via consent forms and secure record keeping. Informed consent letters presented participants with clear details about what would happen in the study and how results would be used. We answered participants' questions and concerns prior to their engaging in the study. In terms of reciprocity, we allowed participants to share their experiences with the public by giving them a voice and we hope this information may benefit mediators, mediation programs, and mediation managers.

Results

Uniqueness

Many mediators stated in interviews that they had "unique" approaches that came from their distinctive life experiences. This was often based on their divorce experiences, though a few credited their successful marriages. It was unclear how mediators concluded their approaches were unique, as they generally stated they had not observed other mediators. For example, two experienced mediators described techniques that included settling small issues first and then moving to larger ones. They stated it allowed them to build momentum based on small agreements. This is an approach used commonly in narrative mediation (Winslade & Monk, 2000; Fisher & Ury, 1983), but the mediators described it as a singularly unique process which they had developed based on long time practice. One mediator called it his "ra ra" approach, stating he was a "kind of cheerleader for the process." Several common approaches were frequently described as unique tools resulting from many years of trial and error.

Private and Court Staff Mediators

Another common theme included private mediators using unfavorable metaphors regarding court staff mediators. Each admitted however, that their observation of court staff mediators was limited or in the distant past. One private mediator compared court program mediation to "public transportation…you get a ride on the bus," whereas private mediation is like "Hertz Rent-a-Car ... you get a working vehicle to get you from here to there." This was explained as being due to court staff mediators having to complete mediations within two hours and their lack of mediation skills. She continued, "… it's like public transportation; you get a ride on the bus; it just doesn't work if you've got a lot of baggage. It's okay if it's all you can get." Private mediators did not know whether court staff mediators could adjourn and continue, or do multiple sessions in a day. When we asked one private mediator if they thought there was an incentive for parties to cut mediation short due to hourly fees in private mediation, she acknowledged that parties may curtail their discussion to reduce cost. Private mediators often articulated a stereotype of court staff mediators and their "assembly line" process, a lack of sophistication, and inability to deal with complex divorces. Private mediators often expressed assumptions about staff mediators, but did not understand the actual processes and procedures that staff mediators followed. This

was evident in their own responses that signaled uncertainty about how staff mediators performed mediation sessions.

Fields of relationships within private mediator practice groups, may reinforce the "rightness" of similar styles, relegating court staff mediators to being inferior or even unethical. Florida family court staff and private mediators exist in slightly different relationship fields and compete for divorce mediation cases, though both practice under the same rules, statutes, and certification.

Six Invariant Constituents

After horizonalizing the data, giving equal weight to all metaphors, we identified six invariant constituents – (1) control, (2) cognition / logic, (3) movement / change, (4) balance, (5) communication, and (6) gender. To a lesser degree, we found the themes of collaboration and emotion. One mediator, who was also a program manager, expressed many of these themes within an overarching context of safety and security.

1. Control

An example of the predominant theme of control was when a private mediator stated, "I try to keep people here…I wouldn't want to adjourn because it's difficult to get them back." Although this statement was initially surprising, many private mediators believed it was their responsibility to do whatever they could to achieve settlement. Another private mediator stated regarding settlement, "… that is what the parties came for." This presupposition may be similar to the understanding that an agreement is good and no agreement is bad. It also may be associated with a problem solving approach, based on providing a "successful mediation" to the "paying client," emerging from a preconception of the parties' goals of settlement. One private mediator candidly stated that they liked to be "…known to settle so I can get repeat business (from attorneys)." Though these statements came predominantly from private mediators, it has been traditionally court mediators who have been associated with settlement focused styles (Alfini, 1994). Court staff mediators did allude to the "judges' preferences for settlement," but none stated that their jobs might be endangered due to a low settlement rate. Settlement focused processes that are repeated over time become institutionalized and may affect how mediators' process disconfirming information, even with a facilitative approach to mediation. Preference for settlement may support a need to *control* the process to achieve a desired outcome or a sense of competition within the field.

Control was also expressed as a dislike of animalistic or regressive behavior. Several mediators described mediation parties as "fighting animals" or "spoiled children." There was a preference among problem solving mediators for logical, calm discourse over regressive, emotional behavior. These mediators framed animalistic or childish behavior as being an obstacle to rational, effective dialogue and resolution. *Control* of emotion was cited most frequently by private mediators and highly experienced mediators in both groups through metaphorical concepts such as "pulling" and "pushing." Three of the newer mediators stated having little interest in controlling parties. Mediators who were most experienced asserted greater control of their interviews, requesting longer story telling opportunities and occasionally attempting to interview the researchers. Only very experienced mediators asked to make

precursory statements, similar to a mediator's opening statement, regarding their mediation approaches prior to beginning the interview questions and were more likely to use *control* metaphors throughout.

2. Cognition and logic

Another invariant constituent included *cognition* and *logic*. Mediators said they wanted to promote parties' "learning" or "seeing beyond their own interests." This theme was especially common to mediators who used a "business" metaphor for mediation, focusing on logical motivations with outcomes based on each party's best interest. The problem solving approach was frequently stated as an effective way to get to settlement. They used engineering related statements such as "structuring the process" or "generating possible solutions." These mediators described a more active role using targeted questions to help parties understand new concepts. They did not favor emotionality as it was seen as an obstacle to "productive" discussion. Some business-styled mediators openly acknowledged their discomfort with emotionality in mediation, with one stating, "If you want the warm and fuzzies, you need a different kind of mediator." Having conducted many family mediations ourselves, we wondered how a mediator could address underlying conflict issues without encountering some emotionality.

Mediators who cited a learning or education based approach to practice often discussed their own learning. They described their transformation as practitioners as "I don't do that anymore" and "I've learned through time..." Revelation through experience over time was expressed frequently by mediators who focused on *cognition* and *logic*.

3. Movement and change

Movement or *change* was often characterized as a journey. These mediators perceived themselves as a guide, such as a "miner with a lighted hat" or "tour guide." Some discounted the value of being overly sympathetic or "dealing with sensitive issues." A preference for moving forward seemed less compatible with the time needed for catharsis and emotional issues which might slow progression toward settlement. Phrases such as "cut and run, or "buck up and move forward" described a process in which emotional issues were secondary to "getting to the other side." We wondered if structures such as court program mediation timeframes might have contributed to a focus on movement forward, though journey metaphors were found in both court staff and private mediators.

Divorce mediation was described by one court staff mediator as "people in a boat on the water who must row together, working together to get to shore." Other metaphors included, "there's some end in sight" and "the light at the end of the tunnel." The mediator was often the person who was to help parties "navigate to the other side of the water" and "reach solid ground." One mediator suggested divorce mediation was like "… miners in a dark mine shaft. The mediator had the lighted safety hat and could help light the way for parties to find their way out of darkness." The mediator was the "giver of light or direction" and parties were often "lost" or "adrift." We, as researchers, were not confident that the mediator could know the lives of the parties as well as the parties themselves, but we did acknowledge that parties look to mediators for direction and support.

The mediators who used guide metaphors for the parties' journeys often perceived themselves as "experts" in conflict resolution and that parties could benefit from their level of experience. As researchers and mediators, we became consciously aware of our own preferences for a mediator to see themselves not so much as an expert, but as more of a skilled facilitator of the parties' learning and potential resolution. We felt somewhat uncomfortable in interviews hearing some mediators discuss at great length their expert ability to guide parties. Our personal beliefs as phenomenological researchers were that parties were the experts in their own lives, but they could benefit from new skills and fresh perspectives to manage conflict.

4. Balance

Balance was expressed through metaphors such as being "neutral," dichotomy such as "yin and yang," "circles" or "cycles," "harmony," and even "juggling." Balance seemed a likely concept to encounter since mediators balance issues of impartiality. Different metaphorical concepts emerged, such as cyclical balance which was revealed in metaphors such as "bring things back to whole," "wholeness is up to the parties," and "it just spirals." A mediator who said she continually has to "juggle" activities particularly stressed having both *balance* and *agility*. We considered that if someone juggles or handles many tasks, they may not spend a great deal of time with any one thing, but must pass items through their hands quickly. She stated she may "bring something up" in mediation multiple times, and this repeating and directionality of statements reaffirmed her juggling metaphor. We would have been interested in observing her in mediation and wondered if she moved through issues in a circular fashion, as opposed to settling each issue sequentially. Balance oriented mediators said they had an exceptional ability to multitask, but included *accident* metaphors such as "missed our meeting" and "I missed an email."

5. Communication

Communication was described as a "tool" that empowered parties. One mediator liked to use humor to "keep it light." Several mediators stated they were "active listeners" and used reframing techniques often. Communication oriented mediators said they used separate sessions early and often. Two private mediators said that they usually conducted the entire mediation in this way. One mediator who liked to use this shuttle diplomacy approach cited communication as an important skill. Communication was a part of negotiating the settlement as well, since parenting plans often required parents to identify communication strategies.

6. Gender

Four mediators identified gender as very significant. An older male mediator and two Hispanic female mediators specifically stated a desire to protect female parties, giving examples where husbands tried to take advantage of their wives. Two in this subgroup said that they found themselves "wanting to help the wife" and "going into an advocate position for the wife." One Hispanic female mediator stated that since women "give birth and do most of the work regarding children, they (women) tend to expect more rights," adding that this was a Latina concept. The older male mediator said that "nowadays women are resentful if they have to support their

husbands for a while." He also said he found himself "leaning toward the female." A younger male mediator stated that women are generally the weaker negotiators in mediation and often need "special attention" to balance power. The notions of gender and benevolent sexism were significantly present in this study.

Research Questions and Results

Research Question 1: What is the essential nature of the family court mediators?

Mediators described similar approaches between the way they addressed conflict in their personal and professional lives. They generally cited communication as an important way to resolve conflict. One of the frequent metaphorical concepts was a mediator as *a guide for the parties' journey, which requires their effort and work*. This reminded us of the metaphor of the "American dream" – work hard and you will get "there."

As shown in Table 1 below, Florida Supreme Court certified family mediators are not as diverse a population as Florida's population (Florida State Courts Alternative Dispute Resolution Center, 2011). Family certified mediators are shown to have self-reported fewer Hispanics and African Americans. These demographics may support particular mental models and fields of relationships for both court and private mediators that are different from those of parties.

Table 1. Comparison of Florida Population and Florida Supreme Court Family Certified Mediators

	Florida Population	Florida Supreme Court Family Certified Mediators
White	75	72
African American	16	6
Hispanic	22.5	9
Reported Other	2.9	2

Note: U.S. Census Bureau website. (2011). 2010 United States Census
http://quickfacts.census.gov/qfd/states/12000.html ; does not include all categories reported.

Florida State Courts Alternative Dispute Resolution Center website. (2012). Mediator search.
http://www.flcourts.org/gen_public/adr/index.shtml ; does not include all categories reported

Some mediators in this study described themselves simply as "mediators." When using this description, they looked downward or smiled as though they were embarrassed. We asked one mediator why she was smiling, and she said she thought it was an "almost grandiose concept," but that she believed it fit. We asked another mediator to what well-known mediators he would compare himself. He said he wasn't "MLK or Jesus," but kind of like the mediators he had known in his own life – his mother, and his brother. Some described themselves in terms of an "energy force," including the "the consummate juggler." One mediator spoke with great energy

and said she has juggled at least a dozen things simultaneously and "rarely drops anything." Another mediator said she was "calm, yet explosive" and "a match that is ready to ignite."

Research Question 2: What is the essence of how family court mediators practice?

Some especially intuitive mediators described family mediation as *sound*, as in an "orchestra." "Each party plays an instrument" and the "mediator is the conductor." Music ranged from soft and pleasant, to abrasive and dissonant. One eloquent court staff mediator likened mediation to "the gentle, quiet voice of reason in a world of cacophony." In each of the sound metaphors, it was the mediator who was the "conductor" or "producer of harmony." We wondered if there were ever times where parties had the ability to conduct, with the mediator being a musician or audience. As researchers, we also began to consider dynamics of the beginning, middle crescendo, and end of mediation as a metaphorical "composition." These dynamics might create a flow to mediation much like a symphony or story arc, with a rise and fall of energy.

Another common mediation metaphor was that of a *journey*. One mediator described family mediation as "people in a row boat in the middle of a lake. They are trying to row to shore, and are not working together, but against each other. There are waves crashing into the boat and murky sea monsters under the water." Mediators described mediation as moving "through a tunnel" or "down a road." We wondered if these mediators might move through mediation in a linear fashion and if there would be substantial focus on getting to a destination.

Metaphorical concepts such as *conducting music, facilitating a journey,* and *a force of energy*, were considered in terms of the process choices they supported. Repetition of these concepts create metaphorical coherence. It may be beneficial for mediators to observe each other to see how differing metaphorical concepts influence process. Court staff tended to describe mediation styles in terms of "harmony," "music," or "emotion." Private mediators more often described their style as a "business," "problem solving," "rational discussion," or "a journey."

Research Question 3: How do family court-based mediators perceive parties and apply their experiences to people in their personal and professional lives?

Some mediators described parties as being "hostile," "like animals," "blaming," and "battling." Others stated there is "so much anxiety and hatred" and "vindictiveness." One mediator said, "Parents are like children." Another stated, "Most often they are like spoiled children, fighting over foolish things that symbolize some kind of power or control. People regress when they are feeling threatened and hurt. There's a sense of loss during divorce that causes relationships to deteriorate." These negative concepts, which were mirrored in the part one, questionnaire study, highlighted distinct differences that mediators perceived in their parties compared with themselves.

Mediators predominantly said they used similar approaches to resolving conflict in their personal lives. They had learned important skills in mediation that were helpful in resolving disputes with family and friends. Several initially responded saying, "I don't have any conflicts

with friends, family, or coworkers." However, after brief consideration, all recalled at least one example. Solutions were discussion-based, while accommodating the other person's comfort level with discourse. Several mediators preferred conflict avoidance, especially with co-workers or people they did not know well.

Research Question 4: What metaphors do family court mediators use for the systems within which they practice?

Staff mediators tended to describe their programs as being a "structure," "family," or "ship." "Family" was used in the context of close relationships and a "ship" indicates purpose. Private contract mediators who did some work for court programs, used program metaphors such as "a tree with many branches" which is organic and connected, but lacking the humanness of a "family" or strategic purpose of a "ship." One private mediator stated "a mixed bowl of fruit," which she elaborated to include diversity and randomness. For a mediator to see themselves as part of a coherent structure with purposeful, interdependent, and human bonds may require a greater sense of association than merely contracting. Future research should investigate the effect of professional relationships cultivated in a closed, supportive court program, as opposed to those in the more free and creative private mediator field.

Research Question 5: What are some of the mediators' ethical dilemmas or internal conflicts?

Mediators indicated a variety of ethical challenges, ranging from confidentiality to empowering parties without giving legal advice. This research question, more so than any other question, generated *journey* and *movement* metaphors. For example, mediators stated, "we run into ethical problems," "an issue we've been confronted with," and "redirecting conversation to facts and fact patterns." There was almost a reluctance to stay in the same place as the ethical dilemma, which caused the mediator to want to "move away" from it. Some ethics metaphors also had the element of delineation such as, "blurs the line between confidentiality and the administrative part of it" or "crossing the line."

Cultural ethical dilemmas were identified by both Hispanic mediators. One mediator described a Latin couple fighting over back alimony and child support. The mother conceded and the mediator had to "fight the urge to push the mother to go after the money" she believed the woman was owed. This mediator then began to explain aspects of motherhood and being a Latina. She explained that in the Latin culture, "women tend to do most of the household work and take care of *their* men." She further explained that children live at home longer and the mother takes care of them until they leave home. There seemed to be a specific understanding that arose from the mediator's cultural experiences, grounded in the relationships between mothers and children, and especially sons.

Three themes or meta-metaphors emerged:

1. Mediator as Educator

A theme of education emerged and parties were perceived as being at a disadvantage due to not "being in the field (of conflict resolution)." Problem solving mediators tended to use statements related to *learning* and *understanding*. Business model mediators also included educating parties so they could make "good business decisions." Mediators who stressed metaphors about education reported that their personal learning derived from their professional practice. Mediators used statements such as, "I see the world much differently" and " I have evolved over the years." Mediators referenced terms such as "getting them to learn how to deal with these problems," "teach," "train people and educate them," and "their way of thinking." Mediators indicated that parties were different from themselves in regards to their lack of knowledge about dispute resolution. There were few references to parties as experts or knowledgeable in their own lives and disputes.

2. The Journey Metaphor

There were a variety of *journey* metaphors such as a "road" or "path," "rowing a boat," "running away," and "moving toward something." Some of the most contentious issues involved decisions about children, including exchange and where they will live. Mediators who used a *boat* metaphor stated the parties "want to get to shore," but they "have trouble rowing together." They fight each other and "sometimes even hit each other with the oars." The "future is on solid ground, they're moving forward" and "they're gonna get somewhere that it's gonna be safe again." These are coherent metaphors regarding a journey in which the future is a solid and positive place to be. Helping parties make difficult decisions regarding their children may be supported by considering that children are not standing on the shore, but also clinging to the boat, "on the open waters." The journey metaphor is hopeful, but requires collaborative work and personal agency, with consideration of how that work affects children.

3. Otherness

Otherness was identified in terms of private versus court staff mediators, mediators being different from parties, separation between the parties, and differences between mediation and the court. Mediators who used *otherness* metaphors tended to value mediation as an educative tool. They also recognized their own learning obtained through their practice. "Boundaries" and "crossing lines" were frequent metaphors used regarding differences in ethical concepts of mediation rules and practice.

We observed an apparent distinction between private and court staff mediators. Court mediators were often mental health professionals or they had social service backgrounds, whereas the private mediators were more often attorneys or business people. The sense of *otherness* might be reduced by identifying and bridging this difference during combined trainings, observations, or discussion forums with both staff and private mediators.

Discussion

This study facilitated a deeper understanding of the experiences of these family mediators. This is important because mediators articulated through metaphors an awareness of having provided a valuable service to their parties, preferable to litigation. This awareness of their own expertise and

parties' lack of it, according to several theories, may have contributed to negative metaphors and *otherness* regarding parties. Considering the emotionality that parties in divorce may demonstrate, mediators also had a sense that judges would like mediation to produce good quality, lasting agreements. Structurally, this initially establishes differing objectives of parties and the institutionalized process since parties are concerned more with their rights at the beginning of disputes (Huo, Lind, & Tyler, 1999). And mediation, as practiced in the United States, is frequently defined by impartiality which may further contribute to the "separateness" of parties and mediators, similar to professional or clinical detachment (Moore, 2003).

The study helped us discover more clearly how mediators selected approaches, not solely based on logical strategic choice, but on their own pre-existing concepts and external social systems. Applying Lakoff and Johnson's (1980) concepts to systems theory, mediators' layered responses indicated that process was influenced by systems and reinforced by metaphorical constructs. This leads to a call for continuing education to address these influences, as opposed to merely skill building. Mediator constructs emerged from previous personal experiences, world views, mediation experiences, belief systems, values, status, systems, program structures, and spiritual concepts. Therefore, the practice field may benefit by greater emphasis on good critical reflection, discourse between mediator groups, and observation of other family mediators.

According to Lakoff and Johnson (1980), gatekeepers of resources are also instituted through metaphorical constructs. With complex divorce processes, it is important to ensure that mediators have sufficient time in mediation or they feel comfortable in adjourning mediation to address the outstanding issues of the dispute. If mediation is rushed to fit an artificial timeframe, mediators may rely on short cuts such as metaphorical constructs which can disadvantage minority parties or those dissimilar from themselves.

The impact of judges', attorneys', and parties' objectives on mediators supported structuration theory's cautions regarding "natural" redundant actions established in rules and best practices. Mediators are situated in history, repeating activities, reinforcing social structures, and connecting themselves to each other through these redundant acts. Structuration theory states that "all structural properties of social systems … are the medium and outcome of the contingently accomplished activities of situated actors" (Giddens, 1984, p. 91). The institutionalized family mediation process has a repeated structure that may vary, but contains many of the same elements – intake, opening statement, parties' opening statements, discussion, caucus, and memorialization of the agreement. According to Lakoff and Johnson (1980), the metaphors we live by, whether cultural or personal, are partially preserved in ritual. This study has revealed that there is benefit to frequently and honestly examining these rituals, as opposed to merely performing and assessing them quantitatively.

The current study revealed two distinct fields of relationships, court staff and private practice mediators, with private mediators frequently stating negative metaphors regarding court staff mediators. Structuration theory demonstrates that without disconfirming experiences, negative predispositions can be repeated and entrenched. It may be helpful for mediator training to increase focus on emotional intelligence and empathy in order to emphasize human factors and process complexity (Moore, 2003). We suggest this sort of collaborative training and developing a professional, institutionalized communication network for private and court staff mediators. This may weaken in-group and out-group forces, supporting a more cohesive professional environment.

Habitus and field theory also speaks to these separate relationship fields and was initially established by Marcel Mauss (1936), and further elaborated by Max Weber (1947), Edmund Husserl (trans., 1983), and Pierre Bourdieu (1985). Habitus is the mental model people use to deal with the world which is similar to metaphorical concepts. Field is the web of social relations and forces that exist in a particular social strata or situation. Fields of relationships in court and private mediation not only reinforce common metaphors, but determine access to mediation business, and influence levels of diversity (McEwen & Milburn, 2007). The separation of fields further alienates practice groups and inhibits maturation of practice.

Habitus and field theory posits that mediators may have communication norms that are different from those of parties. Mediation communication for people in divorce can involve unstructured, emotional discussion (Schreier, 2002). According to Umbreit (1997), most conflicts develop within a larger emotional and relational context characterized by powerful feelings of disrespect, betrayal, and abuse. Lund (2000) has shown that training to understand and manage strong emotions helps a mediator build tolerance for expression of emotion, reduction of stress, increased patience and promotion of settlement. An interesting future study might include mediators' first experiences with emotional conflict to discover how fields of relationships influence their approaches to emotionality, perceptions of parties, and mediation outcomes.

Ting-Toomey (1988) further showed that persons from different cultures have varying ways of negotiating conflict. Florida's diverse population may contribute to cultural differences in negotiation styles, and especially for mediators who have a low context, resolution focused, logical approach to mediation as a *business* or *journey*. Including the benefits of conflict, such as disclosure and transformation, may also increase strategic mediators' valuation of emotionality.

Mediators' metaphors regarding regression, loss, and power can be examined through George Herbert Mead's (1956) symbolic interactionism theory. A theory derived from American pragmatism, people are seen as products of their social environments, but also have the ability to be creative and purposeful. In the current study, it was interesting to discover how mediators drew from cultural experiences and how these perceptions elevated the importance of relationships and influenced expectations. The focus on meaning-making had special importance in this discussion because symbolic interactionism provided a lens for how mediators interpreted themselves as actors on the stage, parties as co-actors, mediation sessions as the setting, and mediation events as outcomes.

Theoretical Integrative Model of Systems (TIMS)
for Understanding Phenomena: Being a Family Mediator
within an Institutionalized System

What emerged from this study was a layering model for how to understand this group of family mediators. This research of family mediators was part of a two stage study (Storrow & Georgakopoulos, 2012). Stage one was conducted using qualitative content analysis and stage two was conducted using phenomenological interviews. In considering the two resulting sets of metaphorical data, an integrative interpretive theoretical framework organically emerged as being instructive. According to metaphorical coherence, there is a confirming influence on significant learning when metaphors are similar across these layers or a disconfirming influence when they are not. Development of a synergistic layered model was not a goal of this study, but

it emerged from the repeated discovery of metaphors residing in layers of mediators' experiences. The resulting model found in Figure 1, the Theoretical Integrative Model of Systems (TIMS), provides an interpretive model for understanding the phenomenon of being a family mediator. Metaphorical concepts emerged and revealed mediators' notions about the following: (1) essential experience of "being" a family mediator, (2) mediator style or approach, and (3) mediator learning. These metaphorical concepts were influenced and supported by a number of factors as seen in Figure 1 below.

Figure 1. Theoretical Integrative Model of Systems

Theoretical Integrative Model of Systems
for Understanding Phenomenon:
Being a Family Mediator within an Institutionalized System

4. Systems Theory

3. Structuration Theory

2. Habitus & Field Theory

1. Symbolic Interaction Theory

Metaphorical Concepts

1. **Essential experience of being a Family Mediator**
2. **Mediator style or approach**
3. **Mediator learning**
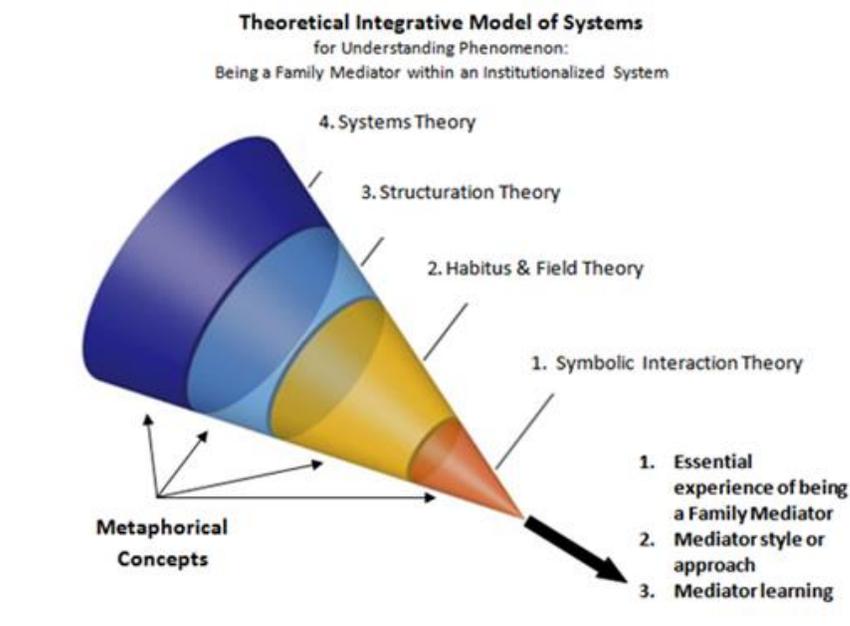
Systems theory (item 4 in Figure 1) includes external and structural influences including processes, rules, and statutes, as demonstrated through institutional symbols, goals, and values. This environment enables and enforces structuration theory's (item 3 in Figure 1) "natural" redundant actions. These recurring actions follow rules and best practices. Ritualized actions are rewarded by the system and strengthen it. This includes opening statements, discussion, caucus, memorialization of agreements, and other acts. Habitus and field theory (item 2 in Figure 1) identifies the mental models which emerge from the language and behavior valued in particular fields of practice, such as the legal or mediation fields. These mental models become accepted reality and a lens through which mediators do continual meaning making. Each mediation introduces new metaphorical concepts which must be interpreted and either assimilated or rejected, depending on their coherence and value added. Symbolic interactionism theory (item 1 in Figure 1) reveals the most personalized form of meaning making. It is the mediator's experience, followed by interpretation, which generates a response. It constitutes the observed behaviors or "style" of the mediator. The TIMS model identifies these four distinct items at which training and support may be particularly effective.

Although the results of this study cannot be extended to other groups, the TIMS model can facilitate other qualitative researchers to understand similar phenomena in which there are institutionalized layers of metaphorical concepts shaping practice. Each layer contributes to

coherent metaphorical understandings, leading to broadly accepted reality. Future research with facilitators, negotiators, ombudsmen, or teachers would be an interesting extension to this research. Quality assurance in mediation programs can be further enhanced through metaphorical analysis and pursuit of the goals in this study – better understanding of mediators' essential experiences, overarching systems, and educational needs.

Implications of the Research

With divorce and separation of parents on the rise in contemporary society, generations of children will grow up in different environments compared to earlier generations. There is an increasing demand for mediation programs to assist families in individualized restructuring after divorce. Therefore, it is vital that we improve our understanding of mediators and their processes if we want to design responsive mediation programs and training. Metaphors regarding mediation guide perceptions of people, ethical dilemmas, conflict, difference, and challenges. Each mediation program has some procedural variance, so it is important to understand additional structural influences such as length of mediation session, availability of adjournment, training, and observation. We recommend more experience-based training including survey feedback, inclusive training across mediator practice fields, and systematic observation or co-mediation with facilitated debriefing. Instituting regular qualitative assessment in addition to quantitative assessment can identify the complex nature of mediation. This study is a contribution in this vein as it has presented a qualitative perspective of mediators in regard to understanding the major factors influencing a mediator's essence of being, mediator styles (approaches), and mediator learning.

Future Directions

Existential phenomenological research should be conducted beyond this set of mediators. Additional forms of metaphors may be explored in future studies so as to present a comprehensive set of metaphors related to this area. Extensions to this study could spawn theoretical development towards understanding family mediators and their experiences. Also, since mediators have a significant bearing on the mediation process and parties' perceptions of mediation, it is recommended that researchers further investigate the metaphors used by court connected mediators and private mediators. Ultimately, the study calls for future research utilizing metaphorical analysis as a credible and formidable qualitative method in the exploration of other phenomena in the field of conflict resolution.

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