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# Deconstructing Family Mediation Practice via the Simulated Client Technique: The Case of Unresolved Marital Attachment

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*Data about the nature of the interventions of family mediators and the degree to which they incorporate particular items of divorce law and current divorce-related research into their practice are largely lacking. This article presents the results of a study examining the working methods of twenty Canadian family mediators using a "simulated client" data-gathering technique in which mediators were briefed to interview the researchers as a divorcing couple who had come to them for an initial mediation session. The study yielded rich data that are systematic and comparable in relation to a range of core issues in the mediation field, including spouse abuse, power imbalance, dealing with the termination of the marital relationship, structured versus therapeutic approaches, and neutralist versus interventionist styles; mediators' handling of the problem of unresolved marital attachment is examined here.*

Relatively little systematic data have been gathered about the precise nature of the interventions of divorce practitioners and the manner in which they deal with current controversies and debates in the mediation field in their actual practice. In particular, there is little reliable information about what actually occurs during the initial phases of the family mediation process, from prenegotiation to clarification of issues in dispute, between mediators and disputants in cases where power imbalance and difficulty coming to terms with the reality of divorce compromises the ability of one of the parties to adequately represent his or her interests in the negotiation. Conventional research methods such as structured survey approaches have been found wanting, and recent

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analyses have begun to use a variety of more direct and in-depth qualitative methods examining what family mediators actually do in these cases.

This article presents the results of a study examining the interventions of twenty Canadian family mediators via a data-gathering method, the "simulated client," in which mediators were briefed to interview the researchers who had assumed the personae of a divorcing couple who had come in for an initial mediation session. The study was part of a larger project examining and comparing the working methods of two groups of divorce practitioners, lawyers, and mediators. The study yielded rich data that are systematic and comparable, in relation to how mediators tailor their methods and strategies to the particular context facing them, to the unique characteristics of the dispute, and the unique needs and situation of the disputants. Specifically, this article will examine two related debates in the family mediation field: mediators' handling of the issue of unresolved marital attachment and the use of a bargaining or settlement-driven versus therapeutic approach in dealing with the issue as part of the mediation process. Although the discussion here is limited to these issues, the simulated client project generated a large body of data in regard to mediator awareness, interpretation, and incorporation of divorce law reform; mediator awareness, interpretation, and incorporation of current divorce research; mediators' management of the initial phase of the mediation process; mediators' position in relation to core issues and debates in the family mediation field, the strategies and interventions they employ, and theoretical models guiding their practice; mediators' handling of substantive issues in dispute including postdivorce parenting and financial arrangements; and the impact of mediators' professional background, practice setting, and an array of other factors on mediators' perception of practice issues and use of strategies and models, and handling of substantive issues in dispute.

### **The Simulated Client Method**

The simulated client data-gathering technique was developed in an attempt to overcome many of the methodological limitations of traditional research methods (Wasoff and Dobash, 1992; Wasoff and Dobash, 1996). It combines elements of both participant observation and the structured survey, and yields data that are both systematic and comparable while reflecting the diversity and complexity of a natural social setting. Our purpose in using this technique in the realm of family mediation was to observe the mediation process in an in-depth manner, in a setting that was as natural as possible, while at the same time covering a specific set of issues for study in a way that would allow direct comparison across mediators in relation to the same set of issues.

The method is distinct from participant observation methods, which are generally not possible in the context of family mediation for reasons of professional-client confidentiality and which pose serious problems for comparing mediators in relation to a set of specific research issues. Partic-

ipant observation does not allow researcher control of the mediation context; that is, control over the types of client and dispute characteristics to which the mediator is exposed. The level of variation of naturally occurring cases confounds examination of specific research issues and questions. The simulated client method allows the researcher to compare how different mediators handle the same case, and thus provides data about the range of variation in relation to specific research issues.

The simulated client method, in providing direct access to mediators' working methods and strategies in a natural setting, also overcomes many of the limitations of conventional interview methods in which respondents may provide the "professionally acceptable answer" to difficult issues. In asking mediators to "just do it," rather than talk about how they would do it, the simulated client design demands less of a departure for practitioners than a self-conscious discussion and recall of their work.

The development and piloting of the simulated client method with a sample of mediators involved a number of discrete stages:

*Identification of specific issues for study.* Analysis of data from a national survey examining Canadian family mediators' positions on core debates in the field, working methods, and use of practice models (Kruk, in press) revealed that there are four core issues around which the field is currently divided: the role of the mediator as therapist, as opposed to limiting oneself to structuring a negotiation process; the neutrality of the mediator in regard to both process and outcome; the place of mediation in situations of spouse abuse and marked power imbalance; and handling situations where one of the parties has not come to terms with the ending of the marriage and is hoping for a reconciliation (with the other ready to proceed).

*Construction of two detailed case studies that served to examine mediators' handling of the four issues.* Two case studies were developed, each examining two of the issues. Further, if the researchers and their two research assistants were to assume the personae of two divorcing couples in an unselfconscious and convincing manner, they needed to feel that they could genuinely "play the part." Four separate case histories thus needed to be constructed, one for each of the players, and each had input into this process.

*Development of a questionnaire to be administered after the simulated client interview.* Together, the case histories for each simulated client and the questionnaire constituted the data-collection instrument for use with mediators.

*Generation of a sample of twenty family mediators (ten per case study).* A random sample of mediators (in private practice, court-based and nonprofit community agency settings, and drawn from the legal and mental health fields) in the Greater Vancouver, B.C., area was obtained. Potential respondents were made aware of the study and the method by letter, followed by a telephone call. Consent for tape-recording the actual session(s) was sought, as this was a necessary component of the research. Those agreeing to participate were briefed to proceed with the researchers just as they would with a genuine

divorcing client or couple from the point of initial telephone contact through to the end of the first session or to the point of clarifying issues in dispute, whichever came later.

*Piloting of the instrument with mediators, who were interviewed and observed in their natural setting.* The researchers thus presented themselves to the mediator as a divorcing couple, first by telephone and then in a face-to-face meeting. The skill of the researchers was essential in establishing the credibility and authenticity of the simulated client couple, both in the construction of the case study and their enactment of same during the mediation session. Importantly, however, in keeping with the usual practice of mediators, the process was led by the mediator. At the end of the session, the researchers broke from the natural setting and the simulated client role and assumed the role of researchers, administering a brief questionnaire about the mediator's working methods.

Although the researchers were "in role" as a hypothetical couple, it is important to emphasize that mediators were able to conduct the session as they normally would with a divorcing couple, behaving in ways familiar to them and in a setting in which they naturally enact such behavior, and thus were not "role playing" in the traditional sense. Extensive preparation resulted in a limited amount of improvisation being required on the part of the researchers during the mediation sessions. The researchers each presented the same persona to ten different mediators, allowing them to later assess the degree of variation in regard to the specific issues under study.

In sum, the simulated client design provided the researchers with direct access to various forms of mediator intervention in the beginning phase of the mediation process and their impact on the parties as well as the nature and degree of influence of various disputant behaviors and dispute characteristics on the mediator. It allowed the researchers to compare and contrast the working methods of twenty mediators and to note key areas of similarity and difference across ten mediators exposed to the same case study and set of disputant and dispute characteristics.

**Case Studies.** The two case studies developed each represented situations in which one of the parties would be disadvantaged in the negotiation context: their ability to represent their interests in mediation was compromised. The two divorcing couples were each in their late thirties and had two children of the marriage, a boy eight years of age and a girl three years old. In the first case study, the wife's unresolved marital attachment put her at a disadvantage in mediation: she had not come to terms with the reality of the divorce and found it very difficult to begin to work through the issues that her husband was eager to process. In the second case, a dominating and abusive husband created a situation of marked power imbalance in mediation: his wife deferred to him in fear of her own safety and could not, without mediator probing and explicit safety measures built into the mediation process, name the abuse or identify her fear of retribution and further abuse at the hands of her husband. The first case study is the focus of this article.

**Data Analysis.** The mediation sessions were transcribed at a relatively broad level: exact wording, filler speech, vocalized pauses, and silences were noted. We did not attempt to capture voice stress patterns, exact positioning of overlaps and interruptions, or the nonverbal behavior of the participants. Given the prior construction of the case studies, which were largely based on previously identified research questions and theoretically derived, categories for analysis were to some degree established prior to data collection. However, new theoretical categories emerging from the data were developed to accommodate unanticipated issues the mediators themselves introduced to the sessions.

We approached data analysis with an initial set of assumptions about the goals and purposes of family mediation, drawn from our knowledge of the literature and our experience as mediation practitioners and researchers. In keeping with a communication perspective on mediation, we focused our analysis on the contextual influences on mediation practice and mediation as a mutual influence process between mediator and disputants. We thus examined how mediators directed the mediation process and influenced outcomes, and how they were affected by certain dispute and disputant characteristics, and assessed the level of variability among mediators in this regard.

### **Unresolved Marital Attachment**

The case study involved an upper-income professional couple in their late thirties who had been married for almost fourteen years, and had attended six sessions of marital counseling one year prior. They had been separated for one month at the time of contact with the mediator. The husband had initiated the separation; the wife had initiated the contact with the mediator. The husband had maintained weekend contact with his children since moving out and was anxious to settle issues as quickly as possible, particularly the parenting arrangements and property division. The wife simply felt overwhelmed—by the suddenness of the husband's decision and the flood of emotions she was experiencing—and her agenda was to slow things down, have her husband begin to come to his senses, and discuss the possibility of reconciliation. The scenario called for the husband to be clear about the issues and to demonstrate his readiness to proceed to negotiation; the wife was to refer to relational concerns and the emotions she was experiencing, which, if not attended to, would make it very difficult if not impossible for her to negotiate the issues her husband had brought forward.

The key issue we wanted to examine in this case was how the mediator handled the issue of the wife's unresolved marital attachment. The mediation literature emphasizes client readiness for mediation being largely dependent on the degree to which both parties recognize that the marriage is over and have at least to some degree come to terms with this fact (Kelly and Gigy, 1989; Kressel, Butler-DeFreitas, Forlenza, and Wilcox, 1989). If one of the parties is "stuck" in this regard to the point that their ability to negotiate the terms of the

divorce is impaired, mediation may not be the option of choice at that time. We wanted to see first of all if the mediator recognized the dynamic and, if so, how the issue was handled: Were the parties referred to counseling before or during mediation, was the issue dealt with by the mediator prior to proceeding to negotiation, or did the mediator proceed to negotiation? Specifically, did the mediator assume a therapeutic role or maintain a settlement-driven approach in the initial phase of working with this couple?

The first thing we noted was the fact that six of the ten mediators scheduled appointments after the wife's initial telephone call without having any telephone contact with the husband. (This stood in sharp contrast to the other case study, where the husband made the initial phone contact, with all ten mediators making telephone contact with the wife before proceeding to schedule the first appointment.) Two of the mediators scheduled separate meetings with each party to begin the process (which were followed by joint meetings); eight mediators scheduled joint meetings. Of the eight who scheduled joint meetings, two held brief caucuses with each of the parties partway through the session.

The two mediators who met with the parties separately before the joint session, as well as the two who caucused during the first joint session, focused on screening for any abuse in the relationship; the issue of unresolved marital attachment was largely left out during these sessions.

In joint sessions, only one of the ten mediators dealt with the issue of the wife's inability to come to terms with the separation, postponing negotiation while she spent most of the session focused on what was essentially divorce counseling including focusing on feelings, stages of grief and loss, and ways that each party could deal with the issue. Nine mediators did not pick up on this as a serious issue; no mediator considered a referral for divorce counseling or saw the case as inappropriate for mediation. With the exception of the one mediator, all quickly proceeded to negotiation in accord with the husband's desires. In all of these cases, in her postmediation log notes, the wife-researcher reported feeling unheard, ignored, and being "railroaded" into proceeding to negotiation.

Core mediator strategies in this case study fell into the following categories:

*Anticipating-preempting during opening statement by mediator.* As part of the mediator's opening statement, which consisted primarily of an orientation to the process and an overview of ground rules for the process, the mediator would provide some indication that he or she expected one of the parties to have difficulties coming to terms with the ending of the marriage. This type of anticipatory empathic statement facilitated engagement; however, it also effectively preempted exploration of the issue as the mediator typically proceeded to lay out the ground rules for negotiation, and identify and explore discrete issues in dispute, and not delve into feelings related to loss. An example from the beginning of a session:

MEDIATOR: I think it's important to say that this is not an easy process for most people. It's difficult for the most part because two people do not usually

wake up one morning and decide that they're going to separate. What usually happens is that you've got one person who has made the decision to leave the marriage and the other person is having to play catch-up. And as mediators we need to be aware of the fact that one of you may be further along the road emotionally than the other. And from one person's perspective it can't be fast enough. They know what they want and they know where they're going and for the other person they feel like they're being run over by a truck. So we need to be sensitive to that and sort of pace this at a pace that both of you can come along.

HUSBAND: Yeah, I think that kind of describes where we're at for sure. I mean I want to get this done and over with as quickly and efficiently as possible. You know we've had a long history of discussions and marriage counseling and I think it's time to kinda get on with our lives, so I'm glad to hear that we are going to get on with it.

WIFE: That's exactly the way I feel, is that I am feeling run over by a truck. It's exactly the way you said it because . . . Edward left fairly suddenly . . . I've been at home with the kids . . . (sigh . . .)

*Normalizing.* A related tactic used by all mediators was to emphasize that not coming to terms with the divorce on the part of one of the parties was a common and normal dynamic in divorce and mediation. This conveyed two things: the expectation, based on the mediator's expertise in such matters, that over time the wife would come to terms with the loss and that the wife's not yet having come to terms with the divorce in itself was not sufficient reason to halt the mediation-negotiation process.

WIFE: It's just been very hard to think about this process.

MEDIATOR: The whole process is difficult. And that's quite understandable and very normal. It will mean a change in your day-to-day life, and now you have to make further changes in order to move along; however, that's going to have to be.

*Acknowledging the difficulty or emotion, then quickly redirecting.* Few mediators ignored the wife's entreaties, particularly at the beginning of the process. They were quite skilled in conveying empathy through reflection of feeling and meaning. Following such a reflection, however, they would refrain from exploring the feeling or probing further, and refocused on the task at hand of moving the parties toward the negotiation process. In other instances, as in the following excerpt, the mediator would reflect an understanding of what was said, but quickly move on:

WIFE: I just want it clear that this was a unilateral decision on Edward's part.

MEDIATOR: I have made a note. I know that you've said Edward has left. And I've made a note that Edward has said that there've been marital problems that have led to his deciding to leave.

HUSBAND: Uh, um.

MEDIATOR: And I make no, there's no judgment that I place upon it. It's just my getting a little bit of background.

WIFE: Okay.

MEDIATOR: Sometimes it matters.

WIFE: Uh, um.

MEDIATOR: And often it doesn't.

HUSBAND: Uh, um.

MEDIATOR: It's just a matter of my understanding that I've been told in lots of circumstances that we've gone through marital counseling and nothing's worked out. And we've agreed that the husband would leave or the wife would leave.

HUSBAND: Uh, um.

MEDIATOR: And we took our best shot and someone has called the question. Nothing in the sense of my getting background is going to turn on whether one's right or wrong about that issue for the moment. It's not like I'm sitting as a judge . . .

WIFE: Okay.

MEDIATOR: . . . and hearing evidence and concluding that there was an agreement to leave. That's not going to effect an award in any event in a court case. It's not going to effect a resolution one way or the other. Okay, tell me a little bit about the kids for the moment. Is Matthew in good health?

*Use of various forms of challenge, including reality testing and direct confrontation.* Later in the session, mediators would begin to move away from empathic statements and reflections of feeling to the use of various forms of challenge when faced with the wife's suggestion that she was not ready to move on. A common tactic was the "best alternative to a negotiated agreement" where the mediator suggests that the only option to proceeding to negotiation was legal resolution of disputed issues, which could have dire consequences:

WIFE (to husband): I think that you're putting the cart before the horse. And that these are decisions that you've made and whatever. And we will start off with things that are best for the children. And I think that what's best for the children is staying in the house for the moment. It means talking to them. It means giving them some time and it means giving me some time.

MEDIATOR: Okay. So, with talking to the children, living arrangements, and time frame, we're going to be addressing these things.

WIFE: Yes. And I don't see why we can't do that now.

MEDIATOR: Okay. That's what we do want to do now. It's just when emotions come up and when you hear trigger words in there, it's my experience that you have a hard time focusing unless we can say what's right here now and agree perhaps to put that on hold for the moment realizing that it is on the agenda. That we will get to it. And that there's going to be a certain amount



of frustration because we can't talk about everything at once. And it is going to take some time . . .

WIFE: Right.

MEDIATOR: . . . to hear each other. And I . . . I understand, I heard you say that you tried counseling. And you tried other things. You want to avoid the legal system. I'm going to encourage you to think about alternatives. As you get frustrated with what's happening here, to think in terms of the time frame . . . that if you do get a legal process going . . . and the struggles and difficulties that happen there. And not to mention the adversarial atmosphere. And the way assets totally disappear in that framework. To ask you to hang in here with this. And try to stay focused. To try to help me help you . . .

WIFE: Uh, um.

MEDIATOR: . . . stay focused. Speak what's important for you. And also realize we're here to make agreements. To stay on track. To work in the best interest of the kids.

In the following excerpt, the mediator has talked about what might happen in the way of court involvement if mediation fails. Only the husband responds. The mediator responds by stating that she is giving "both the benefit of the doubt": that both want to move toward negotiating a parenting arrangement. This directly challenges the wife's previous statements about wanting to slow down the process, and preempts further resistance to moving into the negotiation phase of the process:

HUSBAND: If things don't work out here, is that likely to happen . . . to go to court? I don't want that to happen.

MEDIATOR: That would be way, way down the road. I am going to give you both the benefit of the doubt. You are here. That gives me a good indication that you want to do something regarding your parenting arrangement. And I use parenting arrangement, as opposed to custody and access. Custody and access are the legal terms you use. I like to say parenting arrangement because it is so varied. It can be almost anything that you both can live with and that is good for your children. Okay? And then it can be written up legally.

*Working toward arriving at an agreement on at least one of the issues in dispute in the first session.* In keeping with the husband's agenda that issues get sorted out as soon as possible, all of the mediators worked hard to complete a negotiation process in regard to at least one issue in dispute during the first joint session. Most sessions were thus divided into two parts: (1) orientation to the process, exploration of issues, and developing an agenda and (2) negotiation of at least one of the more immediate issues. In most cases, interim access arrangements were negotiated. Some mediators focused on negotiating several issues in the first session. In the following excerpt, the comediators "slip in" a

few issues just before the end of the session, after they have worked out an interim access arrangement and directed both parties to complete certain tasks for the next session, including the husband exploring alternative accommodation to allow overnight visits. These refer to concerns that had been earlier expressed by the parties, and provide a bridge to the next negotiation session:

MEDIATOR 1: And we need to stop soon because we do have other clients coming in. Just two quick things before you go is. . . . One of things we discussed is the role of friends and family. Your friends and family want to be very supportive of you and give you all their advice on separation based on the horror stories that they've heard and what they see on television and in their own personal lives. What we encourage people to do is to accept the support for what it is there for, which is to be supportive. To also let people know that you are trying to work it out together. You don't want them to see the other person as the bad guy.

(pause)

MEDIATOR 2: Even though you may, at this point, not fully believe that. What it does do is that it creates less conflict if you are able to put some peace in place.

HUSBAND: I'd like to be civilized about this, if possible. It hasn't felt that way between us. I want to see how it goes.

MEDIATOR 2: I think it took a lot of courage for both of you to come here today and I think that's a first good start. There was one other issue. . . .

MEDIATOR 1: What we were discussing at the door. . . . Rita mentioned that she felt that when you came over to the house, it was like nothing was changed, that you were moving in. It comes down to an issue of respect and taking each other for granted. And one of the things that as spouses we tend to do is take each other for granted. What becomes necessary in the separation is to become business partners around the business of parenting. If you treat each other like you would a business partner that you valued, then you will have a parenting arrangement that will work. But we can talk more about that next time.

In addition to these strategies, later in the session mediators would begin to ignore the wife's references to her difficulty coming to terms with the separation and wanting to slow things down and attend only to those parts of the message that would move the mediation process along to negotiation. Selective attention and facilitation prevailed.

In sum, the issue of unresolved marital attachment was not seen to be sufficient grounds for interrupting or delaying the process. Completely ignoring the wife's entreaties, however, would have likely resulted in her resistance to proceeding with the negotiation process. The strategies used by mediators were ostensibly reflecting the wife's feelings and validating them, but in fact served to ensure that the process would not get bogged down in such emotional content, and to move the parties toward negotiation in as quick a manner as possible.

## Conclusion

The results of this study demonstrate the importance of context and the influence of dispute and disputant characteristics in shaping the behavior of family mediators. They also demonstrate mediators' control of process and outcome, and use of "selective facilitation" (Greatbatch and Dingwall, 1990). In the unresolved marital attachment case study, nine of ten mediators chose to maintain a traditional bargaining or settlement-driven approach, redirecting the wife's focus on relational and emotional content, and complaints about the quickness of the process. They selectively addressed those concrete issues that lent themselves to a bargaining framework; relational issues were in no way processed. They acknowledged the wife's feelings and concerns, but quickly moved on, selectively responding to those elements of the parties' communication that moved the process on to the next stage of negotiation. The fact that these complaints and the wife's feelings were initially acknowledged by the mediators suggests that they recognized the salience of the issue; they did not feel, however, that this was sufficient reason to halt or delay the negotiation process. The wife's entreaties to delay negotiation of divorce-related issues were not heeded; the husband, who had initiated the divorce, had a clear conception of the issues in dispute and had staked out his position, and held a distinct advantage in the negotiation as mediators moved the process along according to his pace. Thus initiators of divorce, who are clearly prepared to enter into negotiation over issues that lend themselves to a bargaining approach, appear to hold a distinct advantage in the mediation endeavor over noninitiators, for whom relational issues are paramount.

The simulated client data-gathering technique allowed us to observe these responses in an in-depth manner in a setting that was as natural as possible across a set of mediators exposed to the same context and dispute and disputant characteristics. While there were a number of variations in how mediators handled various issues and dynamics in mediation, our results suggest that in regard to the problem of unresolved marital attachment, mediators respond in fairly patterned ways maintaining a strong bargaining or settlement-driven, as opposed to therapeutic, orientation in the beginning phases of the mediation process, which served the needs of the initiator of the divorce but placed the noninitiator at a distinct disadvantage in subsequent negotiation.

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