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Empowerment and Mediation: A Narrative Perspective

Sara Cobb

For quite some time, dispute resolution advocates have waved the banner of "empowerment" in their efforts to promote alternative dispute resolution as a technology for social change. Empowerment has promised to enhance the involvement of the disenfranchised, facilitate sound policy planning, increase self-esteem, improve community relations, augment decentralization, and in general, return power to the hands "of the people" — a tall order for even the most potent of political and social change agents. Despite the vagueness of existing definitions of empowerment and the relative absence of theory or research on the subject, there seems to be considerable consensus about its worth. Empowerment sells. The promise of empowerment, rooted in the discourse about democracy, affirms and even helps to construct our faith in the American way, our belief in the politics of participation.

But what, specifically, is empowerment? What does it mean "to empower"? How is empowerment socially constructed? Does it (or can it) inform the practice of mediation? How do mediators empower? Who is empowered by the mediation process? And who is not and why? My goal in this article is to demystify empowerment by providing a theoretical frame for the construction of mediation practices that enhance participation. I shall examine existing definitions of empowerment and suggest an alternate definition, one that reflects and constructs a discourse-based perspective on mediation. Using narrative theory, I then examine the mediation process for obstacles to this alternate definition, and suggest specific practices which dissolve these obstacles.

Empowerment Theory: A Discourse of Rehabilitation

Within the dispute resolution literature, empowerment is discussed in terms of its effects at two levels of analysis: the individual and the community or social level.

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The individual effects are increases in self-esteem (Haynes and Haynes, 1989), improved control over decision making accompanied by a reduction of painful emotions (Marlow and Sauber, 1990), and perceptions of increased personal power or potency (Singer, 1990). These effects most often appear in discussions of a therapeutic style of mediation which primarily involves psychological processes (Silbey and Merry, 1986). The roots of this mediation style are in counseling which, in turn, is rooted in social work: empowerment, in this tradition, is rehabilitative.

The rehabilitative/developmental model of empowerment reflects the stages of the mediation process itself (Swift and Levin, 1987). The first stage terminates with the awareness of self-interests and the development of a "position," that is, individuals become cognizant of their own needs (which are constructed or displayed in the public and private sessions of mediation). The second stage includes the acknowledgment of strong feelings with respect to this position (i.e., "venting"). And the third stage terminates in the purposive moves that persons undertake to meet those needs (i.e., the mediation agreement). From this perspective, the process of mediation is not just a relative of social work — it is the *embodiment* of social work's definition of rehabilitation/development.

The second kind of empowerment discussed in the dispute resolution literature leads to change at the social or community level — disenfranchised segments of the population are legitimized through their own efforts to gain control over their lives (Protapchuk, 1990); communities develop their own norms and standards for resolving disputes (Dorius, 1993; Maines and Powell, 1986), and in the process, improve community relations (Forester, 1987; Shonholz, 1977). Generally, this notion of empowerment advocates the removal of structural obstacles for local participation in self-government, and has been widely proclaimed as a technique for "managing diversity" (Thomas, 1991).

Within mediation, this view of empowerment has been used not so much to describe the specific practices of mediators but to advocate the practice itself — it is used as a rationale for the development of informal, decentralized forums for dispute resolution.¹ There is an underlying assumption that, if individuals are empowered in mediation, the collective community will be empowered; somehow, the impact of empowerment on individuals cumulatively leads to the rehabilitation of the community as a whole (Sander, 1976: 121).

But does it? Research on empowerment has typically focused on studies of disputant satisfaction (e.g., Pearson and Thoennes, 1989); disputants' perceptions of their own power (e.g., McLessac, 1981); and reduction in the number and severity of conflicts within communities (e.g., Ehlers, 1991). But neither "satisfaction" nor "perceptions of power" are valid measures of empowerment. And, as critical legal scholars have noted (e.g., Hofrichter, 1987; Abel, 1982), the absence of conflict does not necessarily indicate the presence of justice. Communities without conflict may indeed be the result of the shift from "rights" to "relationships," a shift that Harrington (1985: 137-168) asserts ultimately disempowers both individuals and communities and, paradoxically, extends the coercive authority of the state. In summary, the research is not conclusive, perhaps due to the absence of empirical data for assessing empowerment. Thus, "empowerment" remains an elusive concept.

Despite the absence of research on empowerment, mediators consistently speak of empowerment as a major goal of mediation, even using it as justification

for their practice. This discursive consensus not only reaffirms empowerment as an ethical goal, it also functions as a pastiche of mediation clichés reaffirming "neutrality," "power" and "mediation process." This pastiche has simultaneously consolidated consensus on empowerment and mystified its practice.

Empowerment Practices: A Critical Ethnography

In interviews with mediators,² I asked them to tell me about a time in their practice when neutrality had in some way been problematic. They responded with a variety of stories that evolved in the telling via my own questions and comments. Across all interviews, empowerment was mentioned as both a rationale for practice as well as a practice itself.

In seven out of 15 interviews, I specifically asked mediators to describe how they empower disputants. They responded by describing what amount to three kinds of practices: (1) balancing power; (2) controlling the process; and (3) being neutral (i.e., impartial or equidistant).

Balancing Power

Mediators (both in this data set and much of the mediation literature) understand power in a Weberian sense, as the ability of one actor to impose his or her will on another (Weber, 1940). If both parties have an equal capacity to impose their will, power in mediation is balanced. As one of my mediator interviewees said:

It is because I can balance power in the session that [I'm able] to protect women from the authority of their husbands. See, in my experience, women in this community are not accustomed to speak out for themselves. So, when there is a dispute between men and women (and these may occur outside families), I have to support that woman to speak her mind. I often repeat her words to the man in the session, emphasizing her perspective. But this is like a high-wire balancing act — I've got to be careful with my footing or I'll fall.

Problematically, according to these mediators, there are a number of conditions that can lead to power imbalances. These conditions all involve differences and/or disparities in such areas as: levels of self-esteem (women with lower self-esteem are less likely to ask for what they want); resources (time, money, friends, jobs, attorneys, education, access to courts, etc.); gender, race and class; and the quantity and nature of information (as a result of hidden interests and agendas). The mediators in my interviews were predominantly concerned with power imbalances that resulted from gender differences.³ But it is clear from their exhaustive list that power imbalances are ubiquitous.

To complicate matters further, the Weberian notion of power is not empirical. It lurks unseen in the hearts and minds of disputants, as an attribute of individuals. This is the case because human will is an intrapsychic concept that must be inferred from action; and will affects action either consciously or unconsciously. This fact demands that mediators, in order to identify power, infer conscious and unconscious intent from action. Not only is this difficult,⁴ but it also flies in the face of the very rhetoric that "balancing power" serves, i.e., empowerment. For if mediators must monitor and control power-as-the-imposition-of-will, they privilege *their* account of power over disputants' accounts of the

problem, effectively usurping disputants' rights to account for their own actions, to construct their own stories.

"Balancing power" as it is understood by mediators, requires that they violate disputants by inferring power (as the intent to impose will) from actions, and localize power in the disparities (in information, self-esteem, etc.) that disputants exhibit. Clearly, from this perspective, balancing power requires that mediators construct accounts *outside* disputants' accounts in order to build a story about who is able to dominate whom and why.

Sometimes disputants come into the sessions talking explicitly about power imbalances, in which case it is relatively easy for the mediator to work to help disputants identify the criteria they are using to attribute power (money, social/professional position, age, gender, relationships, etc.) And indeed, mediation provides a context for the explicit discussion of those criteria which disputants use to construct disparities in power (conditions that enable one party to impose its will on another). But as long as power imbalance is an interpretation overlaid upon disputants' stories, it functions (not unlike the psychoanalyst's interpretation) to constitute the authority and privilege of the expert, i.e., the mediator. Mediators report that balancing power is one way to empower disputants; but, paradoxically, because power is read as the intent to impose will, "balancing power" in fact disempowers (delegitimizes) disputants by usurping their authority (their right to author themselves).

Controlling Process

Mediators say that they also empower by controlling the mediation process, i.e., setting and keeping groundrules and moving through set stages toward agreement. The process of mediation itself is understood to be empowering, even when there is no agreement reached. As one community mediator said:

I always like to tell people that we are in mediation to begin to hear two sides to a problem. From that perspective, even if we don't reach an agreement, there is some learning that people can take away and use in other contexts. People learn how to listen, how to value the experience of others. So, in this way, mediation as a process is empowering.

Mediators make a clear distinction between managing the process and managing the content of the dispute — the former is considered empowering and the latter disempowering. This concern about managing content was present in my interviews (all 15 community mediators referred to it) as well as in most of the mediation literature, with some exception. For example, Haynes and Haynes (1989) write that the distinction between content and process is arbitrary and flows from mediators' assumptions about the nature of communication processes. Similarly, Forester (1990: 15) notes that public policy mediation requires that mediators "probe issues . . . in ways that enable parties to reformulate their own interests, needs and well being" — that is, mediators intervene in the content of the dispute.

As a goal, empowerment clearly poses a dilemma for mediators: How can they manage the process and the content of the dispute while enhancing disputants' ability to take control of their own lives? The problem here is that, while there are guidelines for managing mediation process — guidelines that are

designed to empower disputants to resolve their own dispute — there are no guidelines for managing content.

How do mediators determine when they are empowering and when they are just controlling, usurping disputants' control over their own lives? The prevalent distinction between content and process in mediation does not enable mediators to differentiate controlling from empowering. Again, common conceptions of power (as the imposition of, in this case, the mediator's will) obfuscate empowerment as a practice in mediation.

Being Neutral

Mediators talk about their own power as a potential threat to the empowerment process, and invariably invoke their neutrality to diffuse the authority that inevitably accompanies their position in disputes. As one of my interviewees reported:

I never try to tell people what they should do; in fact, my power as a mediator lies in my ability to avoid taking control — my ability to be neutral. Being neutral, to me, means not taking sides, not judging but maintaining control over the process.

Wary of controlling the content of the dispute (defined by mediators as disempowering), mediators struggle to remain impartial while at the same time fulfilling their ethical mandate to "represent the unrepresented interests of parties." Yet, how can they represent unrepresented interests without managing the content of the dispute? And, if they begin to manage content, where are the guidelines for this practice, guidelines that will contribute to the empowerment of disputants? As long as neutrality is understood to be a mental attribute (impartiality) or a relational attribute (equidistance), mediators will be navigating the mediation process with only their intuition to inform them as to which practices are empowering and which are not.

* * *

To summarize, practitioners define empowerment as the result of balancing power, controlling the process, and being neutral. However, these three practices are vague because they are defined using psychological vocabularies and concepts (power as the will to dominate, neutrality as mental or relational attribute) rather than communication vocabularies and concepts.⁵

The absence of communication-based descriptions of mediator practices reconstitutes a psychological definition of empowerment as a cognitive mental state or a feeling. Thus, the discourse about empowerment, what it is and how to promote it in mediation, operates like a closed system, recursively defining key words in terms of words that are dependent for their meaning on the words that they are defining: controlling the process is being neutral, being neutral is needed to balance power which can be done by controlling the process. What is needed is a definition of empowerment that is rooted in communicative practices, one that not only provides guidelines for practice but also a theoretical framework for mediation evaluation and assessment.

Empowerment: A Discursive Practice

Breaking from the dictionary definitions of "empowerment" as a state of being empowered, I define empowerment as a set of discursive practices that enhance the participation of disputants. From this perspective, "participation" is not coterminous to the "telling" of a story; (if it were, turn-taking would be all that is required to insure participation).

Rather, "participation" is used here as a technical term referring to the co-elaboration or co-construction of a conjoint story. By "co-construction" I am referring to the interactive communicative processes in which persons collaboratively construct a narrative; by "conjoint" I am referring to a story which contains elements (plot, characters, and themes) from each disputant's story. Each disputant's story can be recognized as such because each disputant offers: (1) plot lines; (2) character roles; and (3) themes which constitute that disputant as legitimate. "Participation" refers not only to the speaker's telling of a story which positions self as legitimate but also the elaboration of that story by others. Thus "participation," as I am defining it, is fundamentally an interactive phenomenon that cannot be reduced to the speech acts of one person.

Participation/empowerment, can be understood, using narrative theory,⁷ as a function of narrative structures and narrative dynamics that regulate the transformation of stories and the evolution of meaning. If we begin to rethink empowerment by assuming that it is equivalent to participation, the challenge is to identify and understand the discursive structures and dynamics that impact the mediation process in ways that afford or constrain participation.

Narrative Struggle and Participation

Narratives unfold storytime in real time (Riceour, 1986). Events, character roles, and moral themes are structured within the story's content, shaping the meaning of the story in the telling of it. Narratives are material in the sense that they blur traditional distinctions between discourse and action — to tell a story is to act upon the world. That is why participation in narrative processes is so important — the shape and the composition of the social/material world is at stake.

The struggle in mediation begins with the telling of the first story. The question that mediators are trained to ask, "Can you tell us why you are here" (or some version thereof), prompts the first speaker (usually the person who lodged the complaint) to unfold their story. As the first speaker does this, they do more than just "take their turn" — they construct the semantic and discursive space on which all subsequent speakers must stand by providing a set of coherent relations between plots, characters, and themes. Narrative analysis of mediation process has shown that, in approximately 75 percent of a set of community mediation cases, the first story that is told is the one which frames the agreement (Cobb and Rifkin, 1991). Thus, agreements are constructed out of the second story or a combination of both (a conjoint story) in only 25 percent of the cases.⁸ The initial narrative all too often functions to dominate the session.

Participation in the social construction of the world in mediation is delimited by both narrative structure and narrative process in mediation. Narrative structures enable narrative closure, a feature of narrative that not only contributes to the dominance of the first narrative (the first one to be told in a mediation session) but also to the relative stability of conflict narratives. Narrative processes in

mediation delimit participation by constituting adversarial patterns that not only defeat the purpose of mediation itself but also consolidate the "sites" where narrative transformation can take place, rigidifying conflict patterns.

Narrative Structures Counterproductive to Participation

Narratives are structurally composed of plots, characters, and themes (Chatman, 1978). The coherence of the whole is dependent on the relations established between the parts, at both local (within turns) and global (across turns) levels of analysis (Agar and Hobbs, 1982). The plot makes sense in the context of emergent moral themes and character roles; in turn, character roles emerge via the moral frames and the act of story telling.

It is precisely because narrative components function interdependently that narratives are able to regulate their meaning; narrative stability is the result of narrative coherence. Although there can never be total coherence, or totally and permanently stable narratives, there is always some degree of "autopoietic organization"⁹ which stabilizes (at least momentarily) the interpretation of the narrative. Thus narratives exhibit closure via the temporary stabilization of the relation between plots, character roles and themes.

The stabilization of these relations, in turn, can be understood as a function of both the horizontal and vertical structuring of the narrative. Horizontally, the plot orders time in a linear sequence that supports the character roles and the moral themes (and these are, of course, reflexively related). Vertical narrative structures frame specific plot elements, character roles and themes, and stabilizing sites in the narrative that are potentially discontinuous or problematic (Agar and Hobbs, 1982). As Pearce and Cronen (1980) point out, meaning is hierarchically organized; from this perspective, narratives also can be understood as "nested." Contextualizing narratives elaborate portions of the main narrative (the horizontal narrative), reducing ambiguity and consolidating meaning at points that have been or could be contested. The vertical and horizontal structures work together to delimit the range of possible interpretations, increasing the coherence of the narrative.

In mediation, narrative closure or coherence is problematic because it stabilizes the description of the problem in ways that delimit its transformation. If we assume that persons come to mediation due to protracted and intractable conflicts, then we can also assume that there are a limited number of ways that the problem has been "storied" by participants. Furthermore, we can assume that persons interact from within the conflict narratives (which are not necessarily expressly narratives about conflict, but narratives which enact the conflict). If we accept these assumptions, mediation becomes a struggle to destabilize conflict narratives, a struggle to open up stories to alternative meanings and interpretations. This is not a psychological struggle between competing interests and/or needs — it is a discursive war for survival, an uphill battle against the very conditions for coherence.

Coherence and closure are also problematic in mediation because they are unevenly produced in the session: some narratives are more coherent than others. And, since the more coherent narratives dominate, persons with less coherent narratives have less access to participation; unless their narratives are adopted (an unlikely occurrence), they become marginalized in the discourse, colonized by the power of the dominant narrative.

There seem to be two variables that conspire to construct some narratives as more potent than others: completeness and cultural resonance. Obviously, the more open the narrative leaves itself, the more vulnerable it is to transformation; in turn, narratives that regulate and close sites for reinterpretation are more complete and more stable. For instance, in mediation, children's stories are often less complete than adult's stories. Children often leave out sections of the plot or fail to provide a rationale for a character's role — they begin in the middle, go back to the beginning, and never provide a conclusion. They usually have fewer coherent, textualizing narratives and thus their narratives are more open or less coherent. This can lead to the marginalization of children's stories in mediation, effectively reducing their participation.

But the nature of the coherence established in the narrative also affects the adoption or marginalization of speakers' narratives by others — some stories are more resonant to dominant culture than others. For example, in western culture, linear narratives predominately told by men are more dominant than nonlinear narratives predominately told by women (ChnFrait-Duchet, 1991); thus women are disadvantaged in informal legal settings where linear stories produce more favorable results (Conley and O'Barr, 1990). In addition, narratives which gain coherence via the connection to mainstream metaphors (such as hydraulic metaphors of emotion or cost-benefit metaphors from business) are also more potent because the broader culture has already done the "work" to seal off discursive sites where these metaphors can be contested. Thus there is a ready potency in dominant cultural stories that, when appropriated, lend their potency to the narratives that unfold in mediation. Thus, the more cultural resonance, the more stable (dominant) the narrative.

In summary, the nature of coherence and its relative presence or absence in narratives contributes to power and influence. In mediation, this is problematic because disputants whose stories are less coherent (less stable) can be absorbed into a dominant story which does not flow from their experience. When this happens, they are less able to participate and their access to legitimacy is delimited (Fraitclough, 1989). However, it is not only narrative structures that constrain disputants' participation; narrative process is also potentially problematic.

Narrative Processes Counterproductive to Participation

Narratives are unfolded interactively, in turn-taking structures.¹⁰ Conversational turn-taking structures function to orient speakers to preceding turn content (Sacks, Schegloff and Jefferson, 1974). Thus, the second speaker creates conversational relevance by establishing links between what they say and what was previously said. Unless the second speaker uses the first narrative, that speaker's story will operate as tangential to the first narrative (Watzlawick et al., 1974) and there are social/relational consequences for people that refuse to comply with conversational norms (Bateson, 1979). The second speaker to tell a story in mediation does not usually speak tangentially — they tie their story to the first speaker's story,¹¹ and, in so doing, contribute to their own domination.

Contrary to the literature on mediation, narrative processes can function to construct and maintain adversarial relationships in interaction. This not only rigidifies the conflict narratives but also reduces one disputant's participation relative to the other. The enactment of conflict (the telling of conflict narratives) is accomplished via the account sequences of accusation-denial and excuse-

justification (Buttry, 1987).¹² These speech act sequences require that disputants manage junctures between their stories, around which the struggle over meaning takes place. In some mediation sessions, this struggle is over the representation of material objects, in others it is over the meaning of a divorce. In both cases, the struggle is over legitimacy in discourse.

"Legitimacy" is a function of the roles or discourse positions assigned by and in narratives. There are two kinds of discourse positions in mediation: negative and positive. Positive positions (which are always constructed by self for hard-working, frugal) and the attribution of positive characteristics (loyal, help" or "I meant to inform her but I was afraid"). Negative positions are always constructed by the first speaker for the second speaker, via the attribution of negative characteristics (disloyal, lazy and spendthrift) and bad intent ("He told me that to frighten me" or "She tried to cheat me out of my pension").

Since legitimacy requires positive discursive positions, persons imprisoned in negative positions remain delegitimized. In turn, participation is always contingent upon legitimacy — disputants who are unable to alter discourse positions are marginalized and disempowered. The evidence for this claim is in the account sequence itself: accusations (which construct negative position for others) lead to justifications, denials, and excuses — all accounts designed to mitigate a negative social position (Scott and Lyman, 1968) and its interactional consequences. However, the attempt to mitigate rarely does more than reconstitute the very narrative structures that contribute to a speaker's marginalization.¹³ Once imprisoned in negative positions, few persons are able to construct alternative positive positions for themselves (Cobb and Rihlin, 1991). And it is this fact that provides the logic for including a third party in conflict: quite simply, the third party has the discursive access to both sides of the dispute.

In summary, both the account sequence as well as the turn-taking structures contribute to delimit the participation of one or more of the disputants (usually the second speaker, who must orient to the first narrative in order to mitigate a negative position in the discourse). If we accept this description of discursive processes in mediation, it follows that the mediation process constructs the conditions for participation, effectively (and unwittingly) that narrative structures and processes contribute to disempower disputants and undermine the mediation process, how can we use this perspective to advance some specific guidelines for empowerment? How can mediators enhance the participation of disputants?

Implications for Practice

Empowering practices are those that enhance the participation of disputants, specifically those that destabilize narrative coherence (horizontally and vertically), reducing the dominance of the first narrative and perhaps avoiding the destructive account sequences that only reconstitute negative positions for the second speaker. The narrative perspective offers at least three guidelines for empowering practice.

First, it may be useful for mediators to conduct private sessions first, following a public session in which the process is described and the groundrules laid. If both stories could unfold outside the joint setting,¹⁴ there would be more opportu-

nly for the mediator to "open" narratives by constructing sites where narrative transformation is possible. Also, beginning with a private session would enable mediators to avoid the adversarial exchanges that result from account sequences and turn-taking structures — people would not need to defend themselves nor would they entrap themselves in their adversary's narrative.

Second, mediators can enhance participation in the mediation processes by facilitating the construction of positive positions for all disputants. If we can assume that persons must be legitimate in order to "have their say" (as well as to have their "say" elaborated by others), enabling persons to be legitimate is consistent with the ethical and pragmatic¹⁵ goals of mediation.

Constructing positive positions for disputants requires complex tools for intervening in narrative construction. In any conflict narrative, the positive position of the speaker is going to be dependent on the negative position constructed for the "other." Therefore, any move to relocate the "other" potentially threatens the positive position for self. But there are ways to construct positive positions for the "other" without threatening the speaker. One way to do so is by using "Positive Connotation,"¹⁶ an intervention that involves the construction of positive intent for actions committed by the "other."¹⁷ This intervention alters the logic of a disputant's account for the other's actions; this altered logic may help to generate an alternative story. Consider, for example, the following exchange from a mediation conducted and recorded by the author:

Disputant: Then he told me that he wanted to have Alice 50 percent of the time — and I know that he is just saying that because he wants me to back off on the amount of child support that I have requested.

Mediator: Why would he want to pay less money?

Disputant: Because he wants more for himself, that's why!

Mediator: Oh, you are suggesting that he is afraid of the future. . .

Disputant: Yeah, and so am I!

Mediator: OK, that is a place to begin — why don't we make a list of things, the circumstances, which frighten each of you most, beginning with you.

In this exchange, the ex-husband was originally constructed as manipulating the negotiations by asking for more time with his daughter; however, the mediator has suggested that the motivation is fear, not the intent to hoard money. The disputant agrees which, in effect, has helped to develop a new framework for understanding the actions of both parties. The list to be constructed will provide a context in which the new formulation will be further and more elaborately developed in both disputants' narratives.¹⁸

Providing positive positions for all disputants reduces, if not eliminates, adversarial conversational patterns by altering the stories in which adversarial account sequences are enacted. This can be initiated in the first session (which I suggest could be a private session). If the summary elaborated at the end of the private session is a story that advances positive positions for both disputants, then the joint conversation in the public session will not be adversarial, and there will be a common discursive framework from which to build an agreement.¹⁹

When I have suggested this technology to mediators, they sometimes complain that positive connotation seems unethical: (1) because it makes obvious interests²⁰; and (2) because mediators cannot tamper with the "content" of the dispute — (altering narratives is outside the role of the mediator). To these concerns, I would reiterate that the distinction between content and process in the literature and training is false. Mediators do, in fact, "shape" the dispute by the questions they ask, which also demonstrates that mediators are in the business of constructing a reality with disputants. There is no escape from discourse: It is the medium in which disputes are constructed and altered. Positive connotation only makes this condition visible.

A third practice that may be used to enhance participation is "circularizing" stories — that is, creating interdependence between the disputants and their stories, as well as interdependence between disputants.²¹ This is done by asking a series of circular questions (Tomm, 1987; Fleuridas et al., 1986). Table 1 (on page 256) provides a list of such questions and a logic for their sequencing, something that is currently nonexistent in mediation training. Mediators should ask these questions in the first private session, and the narratives that emerge could be used not only to make the initial summary at the end of the first private session but also to frame the conversation prior to the agreement. As such, these questions are enormously useful to the mediation process and consistent with the ethical goal of empowerment: They favor the construction of a conjoint story, one that contains elements of both disputants' positions.

Collectively, these three guidelines for practice function to enhance the participation of all disputants by providing an interactional context in which nonadversarial narratives can be advanced. They also function to open narratives, destabilizing both the horizontal relations between plot, characters and narrative sites. Destabilized conflict narratives are more open to transformations and elaborations, which, in turn, facilitates the development of rich and complex narratives for all disputants.

TABLE 1

Circular Questioning

Circular Questions create descriptions of responsibility without blame via:

- (1) a series of questions that collectively create descriptions of interdependence (indicated by @); and
- (2) one question which yields information of differences (indicated by •).
- P: Plot Development
C: Character Development
T: Theme Development
- What is the nature of *your* difficulty?
- @ P How did this problem begin?
 - @ P What happened before?
 - @ P When you noticed a problem, what did you do?
 - @ P Then what happened?
 - @ P If this doesn't change, what can you expect to happen?
 - @ P When this problem occurred, what did you do to solve it?
 - @ P What did they do to solve it? How did you interpret that?
 - @ C Who played central/background roles?
 - C Whose role in this drama have you been most surprised at and why?
 - C Who has understood your role the best/least? What do they know that others may not know?
 - C Whose role to you sympathize with the most and why?
 - T What values do you want them to learn from this situation?
 - T What would they say they want you to learn from this situation?
 - T How were your attempts at resolution interpreted by the others?
 - T What would they say is the most problematic emotion/thought for you?
 - T What is the area of their participation in the dispute that you understand the most/least?
- What is the nature of *their* difficulty? (Ask the same questions, to be answered from the perspective of the "other.")

NOTES

This article draws upon findings from a research project entitled "The Social Construction of Neutrality in Mediation," supported by the Fund for Research on Dispute Resolution, conducted by Janet Rifkin and myself. The opinions expressed herein do not necessarily reflect the position of the Fund.

1. See Silbey and Sarat's (1989) description of the three groups that have advocated the development of informal legal processes; all three groups rely on empowerment as justification for informalism. The "establishment bar and legal elites" argue that informalism empowers courts to discharge their duty more effectively; the "access-to-justice proponents" assert that informalism argue that mediation empowers communities to develop norms and moral standards that fit persons' lived and local experience. Thus, empowerment is central to the variety of rationales used to advocate mediation practice.

2. As part of a research project on the practice of neutrality in mediation, I interviewed 15 community and family mediators, 11 women and four men. Two (men) practiced in hospital settings; the rest (two men and 11 women) practiced in community mediation centers and private mediation services within four different communities in New England.

3. They are obviously resonating to the debate in mediation between feminists who decry mediation as harmful to women's interests and rights, and proponents of ADR who argue that mediation empowers women. See Rifkin (1989) for an interesting discussion of this debate.

4. There are multiple ways to interpret action and, therefore, power can always be explained away with new descriptions of action.

5. Code of Ethics, Society of Professionals in Dispute Resolution. See Cobb and Rifkin (1991) for a discussion of the paradoxical dilemmas that the rhetoric of neutrality creates for mediators.

6. The Cartesian distinction between meaning and action that is reconstituted in mediators' mediation. For critiques of this distinction, see Thompson (1981), particularly Chapter 4: "Problems in the Analysis of Action."

7. I am specifically referencing the dynamic and political versions of narrative theory that presume: (1) reflexive relations between the telling and the told as well as between the material and the social world (see Feldman, 1991); (2) narratives are emergent and constructed in conversation (Shotter, 1992); (3) narratives that are auto poietically structured — that is, they self-regulate their own meaning (Genette, 1980), while they are structurally open at specific sites (Suzuki, 1992).

8. In a research project on the practice of neutrality in mediation, Janet Rifkin and I developed a technique for mapping mediation sessions that depicts the presentation of narrative "kernels" (Chaunman, 1978) through time. In this way, we tracked the presentation of the first narrative, the second speaker's counter-narrative (which is always a retelling of the first story) and the narrative(s) used in the construction of the agreement. Most of the time, the "agreement narrative" was the first narrative.

9. I am here reaching into the literature of second-order cybernetics for a metaphor (autopoiesis) to describe the way narratives regulate their own meaning. See Varela (1979) for descriptions of autopoietic processes. In my view, the use of this metaphor is another way to describe what Genette (1980) refers to as "narrative closure."

10. I am aware that mediation turn-taking structures are highly regulated, much more so than in everyday life. However, despite this regulation, turn-taking in mediation functions similarly: accusations are followed by justifications, denials and excuses (Cobb, 1991; Garcia, 1991).

11. This is always the case in sessions in which the mediator does not make a summary of the first narrative. When the do make a summary, disputants are more likely to orient to the mediator's summary (Cobb, 1992), as the turn-taking literature would suggest.

12. Merry (1989) makes the point that not all cultures enact disputes in the same way; there are differences cross-culturally with respect to who participates, what kinds of problems get mediated and what are the ceremonial and interactional rules that regulate disputing processes. Thus the account sequence that Buttry (1987) describes is not a universal or inevitable sequence. However, it does seem to fit American disputing speech act practices.

13. Perhaps this explains why agreements most often flow from the first story — the second speaker seldom gets an opportunity to launch an alternative story because they are too busy mitigating the negative positions in the first speaker's story.

14. I am aware that it is impossible to create a context where the conflict narratives do not contaminate each other. Disputants' stories are usually told repeatedly to each other, as well as to

others outside the dispute. So it is naive to assume that simply separating the parties by opening the mediation with a private session functionally separates disputants. But as this would impact the unfolding of the narratives, it is a place to start.

15. From a narrative perspective, ethics and pragmatics are not separate domains: empowering others (an ethical goal) requires that mediators manage the discourse (pragmatics). The collapse of ethics into practice is consistent with the poststructural literature on the philosophy of science. See Benveniste (1983).

16. See Schwitz-Palazzoli et al. (1982) for a good description of this intervention.

17. Obviously, this can be seen as an unethical practice, for certainly there are things that people do that should not be imbued with good intent — things like battering and abuse. I am not advocating that mediators automatically, thoughtlessly assign positive intent to all action. But this is no different from the observation that not all kinds of conflicts belong in mediation. I would use this as a measurement of which cases could go to mediation: the ones in which I can, in good conscience, assign good intent to the actions of the disputants.

18. I am assuming here that, for this ex-husband, it is more legitimate to be afraid than it is to be heard money. But this is a cultural assumption that may or may not hold. Positive connotations are helpful as long as they are consonant with the moral order of the disputants' culture. This point has obvious implications for ethnic conflicts: If there are not shared moral frameworks, then the grounds for the construction of legitimacy are not available.

19. I have experimented with these summaries. I suggest to the disputant that we do not know the experience of the other, and that, in fact, we are better off building two possible narratives to account for the problem. We can then see which one more closely approximates the experience the other describes. This narrative option functions to frame mediation itself as a storytelling process as well as to expand the range of narrative components that can be used to frame a possible agreement.

20. See Carbaugh et al. (1986) for an ethnography of the Kaleidoscope Project, a project at the University of Massachusetts, designed as a forum to promote civil public discourse. Using a debate format, the moderator used circular questions to enable each side of a dispute not only to account for personal development of their positions, but also to create linkages between opposing positions.

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