Making Mediation Work: A Sociological View of Human Interaction

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"Where you stand depends upon where you sit."[*]

Abstract

Symbolical-interaction sociology is useful to mediators and relevant to mediation practice. It explores the elements of everyday social interaction including behavior of disputants. In particular, Erving Goffman's frame analysis offers mediators a practical tool useful in assessing and managing both the intellectual and emotional responses of disputants. Moreover, frame analysis can effectively guide mediators in assisting disputants to re-orient their respective responses to both the dispute and each other enhancing opportunities for meaningful dialogue. In addition, the game, drama, and ritual metaphors offer simple but powerful analytic tools for guiding clients through terrain which would otherwise be chaotic and overwhelming. Mediators committed to enhancing their practices and researchers in search of a sound theoretical base for effective dispute resolution can benefit substantially by applying these insights in mediation practice.

INTRODUCTION

In order to resolve their conflicts disputants often need to establish a sense of reference amid a very personal sense of chaos. This is because social conflict can engender dramatic change and disequilibrium. Mediators work to establish meaningful conversations between disputing parties in order to navigate this chaos.[i] This is particularly true in family disputes in which emotions run high. Misattributions and misunderstandings are indeed numerous in such disputes. Insights from symbolic interactionism, including the notable work of Erving Goffman, can be useful in establishing those meaningful conversations. This paper reviews some of the fundamental tenets of symbolic-interaction sociology and demonstrates how they are useful in mediation. These are *frame*

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[*] Old adage and familiar axiom attributed to several sources, including Sir Winston Churchill.

analysis, the *game metaphor*, *dramaturgy* and *impression management,* and the *interaction ritual*.

Frame analysis is a method by which mediators can unpack interests often buried beneath the parties' respective espoused legal positions and thereby assist the parties to discover alternative frames that better serve these interests. The *game metaphor* predicts that mediation, as a dispute-resolution game, works best with ground rules that foster collaborative joint-problem solving. *Dramaturgy* and *impression management* divide social interaction into *front-stage* and *back-stage* events—a useful dichotomy for understanding the gap that often emerges between manifest negotiation behavior and back-stage maneuvering. Disputants, as social actors, are often motivated to hide back-stage intentions, particularly when revealing them might expose the disputant to loss of *face* and increased legal exposure. A keen understanding of how *impression management* hinders joint-problem solving provides greater opportunities to provide conditions that produce voluntary settlement. Mediator-initiated *interaction rituals* that promote collaborative joint-problem solving are often helpful in increasing opportunities for settlement. In sum, an understanding of symbolic-interaction sociology can enhance mediation practice by helping the mediator behave in ways that will optimize the conditions for settlement.

Part I of this paper introduces *frame analysis*, its contemporary development, and its useful application in the mediation process. *Part II* examines Goffman's three social metaphors, namely, the game, drama, and ritual metaphors and establishes their relevance and application in the mediation process. The following vignette represents a case drawn from my own mediation practice.

Vignette – Family Dispute

Leslie and Robyn are a middle-aged married couple. They have a seven-year-old child, Bartholomew. Recently, they split up, ending a ten year relationship. Leslie agreed, on a temporary basis, to move out of the family home, while Robyn agreed to stay with young Bart. Both are concerned about continuing to pay the considerable mortgage on the family home. They both have a desire to have sole custody and live in the family home. Both are attorneys working long hours in their respective jobs. They are both quite distraught by the recent upheaval. Both have requested that you act as their professional mediator, on the advice of their respective lawyers. You have agreed to take the case. Now, you are wondering how you might handle it.

While the vignette provides the typical family case the techniques discussed below can be generalized, with some modifications, to other dispute genres. Symbolic-interaction sociology seeks to capture elements common to all social situations. Therefore, one can apply the analysis in this paper, with some

caution, to a host of dispute scenarios, although the discussion here will be confined to the family dispute presented in the vignette.

I. APPLYING *FRAME ANALYSIS* TO MEDIATION

A. *FRAMES* AND *FRAME ANALYSIS*

Erving Goffman has produced some of the most foundational concepts in symbolic-interactionism. His work on *frames* and *frame-analysis* provides concepts directly applicable to mediation. Before one can properly appreciate their application it is important to clarify their technical meaning. The notion of *framing* emphasizes the inherent human tendency to organize experience into discrete wholes, distinct from other experiences (1974). *Frames* are the principles by which we distinguish and organize various human experiences.

Erving Goffman defines *frames* as:

> *principles of organization which govern events – at least social ones – and our subjective involvement in them: frame is the word I use to refer to such of these basic elements as I am able to identify* [Goffman, 1974, p. 155].

The related concept, *frame analysis*, is an examination of the various ways in which we organize our experience. Goffman defines *frame analysis* as:

> *a slogan to refer to the examination…of the organization of experience* [Goffman, 1974, p. 155]*.

The *frame* represents the basic unit in symbolic-interaction sociology and *frame-analysis* its application to social interaction.

During mediation, parties naturally draw on *frames* to characterize situations, problems and, adversaries (Schon and Rein, 1994). Drawing on Goffman's work, Schon and Rein define *frames* as "underlying structures of belief, perception, and appreciation" (p. 23). Kaufman and Smith (2002, p. 1) define *frames* as perspectives that "organize knowledge in ways that affect individuals' interpretation of a situation, and their choices regarding it." In negotiation, *frames* often produce a great deal of inertia. While framing is useful for survival, the risks inherent in the framing process include the development of blind spots and pre-mature foreclosure of inquiry. *Frames* often contain biases or pre-dispositions, which discourage the gathering of further information and examination of details. Biased frames often produce a host of misattributions which stymie meaningful dialogue (Kaufman and Smith, 2002).

The theory of framing includes a broad array of human experience and a myriad of potential sources. *Frames* develop as a response to one's life experiences, socio-cultural environment, historical influences, social structure, and, arguably, inner cognitive and emotional life. In this regard, Goffman

envisions a myriad of influences, although his analysis acknowledges the great force of the social situation in determining individual behavior (1997, p. 24: orig. 1956a). In fact, Goffman expressly reminds us that the social situation is often neglected.

> *…so we have the following problem: a student interested in the properties of speech may find himself having to look at the physical setting in which the speaker performs his gestures, simply because you cannot describe a gesture without reference to the extra-bodily environment in which it occurs. And someone interested in the correlates of social structure may find that he must attend to the social occasion when someone of given social attributes makes his appearance before others. Both kinds of student therefore look at what we vaguely call the social situation. And that is what has been neglected* [Goffman, 1997, p. 230: orig. 1964].

Accordingly, mediators must always look to the social situation in order to accurately determine the meaning of discourse and gestures.

In exploring the framing process one can observe the interaction between social structure and the various preferences of social agents. For Goffman, the social environment does not solely determine individual choice or agency. Instead he envisions a recursive inter-play between individual agency and the constraints of the discursive field. Accordingly, *frames* within disputing discourse likely result from the interaction of both the actor's agency and the constraints of the discursive field (Steinberg, 1999, p. 736). This awareness of interactions is the real essence of his project as it countenances a host of interacting influences that we might otherwise neglect.

Arguably, *frames,* as schemata, influence behavior and consequently affect the preference of individual actors. Some theorists, drawing on Goffman's ideas, even suggest that *frames* may even contribute to the actor's emotional life and identity formation (Wolvin and Coakley, 1988, p. 44). If this is indeed correct, *frame analysis* may well provide a powerful tool for the resolution of identity-based conflicts. In addition, *frames* transcend individuals and may govern the behavior of entire social groups. Such *shared frames* can come to dominate a group's bargaining strategy.

Even with large groups *frames* are less fixed than one would expect. For example, Guobin Yang (2000, p. 594) has demonstrated, in his research on conflicts arising in the Chinese student movement, that the identity of the entire social movement can underwent dramatic collective transformation through the reframing process. Accordingly, *frames* influenced student emotional achievement and collective identity, transforming not only the interior emotional life of vast numbers of students but also, the collective outward behavior. This gave rise to the eventual short-lived uprising that led to the crackdown by the Chinese government. In brief, Yang posits a recursive feedback loop in which emotional achievement, constitutive of social structure, influenced *frames* and these *frames,* in turn, influenced collective emotional achievement and potential

changes in the external social environment. For mediators, one significant function of framing in a social organization or community may be its ability to produce social change (Benford, 1997).

    B. THREE CONTEMPORARY APPROACHES TO *FRAME ANALYSIS*

        In contemporary dispute resolution literature, research studies have attempted to measure the effects that *framing* may have on subsequent attitudes, opinions, and behaviors. Three major approaches to *framing* in dispute resolution emerge from this research, namely, *frames* as cognitive heuristics, frames as habitual interpretive schemes or categories, and frames as linguistic issue development (Putnam and Holmer, 1992, pp. 128-155) [See Table 1].

        The *cognitive-heuristics* approach asserts that frames are fixed cognitive structures that help us organize the events in the world (Putnam and Holmer, 1992, p. 130). This approach seeks to understand the principles of organization inherent in human perception (1992, p. 131). The *habitual-frame-categories* approach emphasizes norms, habits, rituals, and personal characteristics. Accordingly, frames serve to distinguish and delineate social norms, habits, and rituals from other behavior. The *linguistic-[issue-development* approach reflects the social-constructivist paradigm in social science (1992, p. 132). This approach posits that dispute frames correspond to the shifting conceptualization of the dispute, in the words used to describe it (1992, p. 137). In short, the words chosen to frame the dispute shape the issues in dispute (1992, p. 139).

        Remaining sensitive to each approach provides the mediator with three distinct and complementary reference points from which to assess and manage any dispute. Each does not correspond to an exact nomothetic category, but rather represents a non-mutually exclusive *ideal type.*

Table 1

Comparison of Three Approaches to Framing[**]

	Cognitive Heuristics	**Habitual Frame Categories**	**Linguistic-Issue Development**
Definition	Perception biases associated with choice	Categories and interpretive schemes	Conceptualization of a problem
Nature	Stable perceptual biases	Hierarchically arranged categories	Dynamic interaction processes
Location	Cognition	Superimposed and constitutive of discourse	Meanings that arise from discourse
Meanings	Reside in people	Frame categories, content, and levels of abstraction	Understandings of problems
Reframing	Recognition and correction of biases	Shifts in frame categories and meanings	Transformation of understandings
Role in Mediation	To identify and overcome cognitive limitations and perceptual biases, which prevent settlement.	To encourage recognition and acceptance of alternative frames.	To further joint problem solving by encouraging the parties to redefine the issues in dispute.

[**] Source: Adapted with permission from Putnam and Holmer, 1992, p. 143.

In Table 1, the task of the mediator shifts with how she conceptualizes the framing process. With the cognitive-heuristic model, the effective mediator assists the parties to overcome cognitive limitations and perceptual biases that prevent settlement. In the habitual-frame-category model, the effective mediator encourages exploration, recognition, and acceptance of alternative frames that may at first feel uncomfortable to the parties. In the linguistic-issue-development model, the effective mediator encourages the parties to redefine issues using alternative language. Ultimately, the aim of each approach is to provide greater opportunities for dispute resolution.

B. THE TASK OF *REFRAMING* IN MEDIATION

Individuals often use frames to filter information, whether through cognitive limitations, habitual categories, or choice of language. Parties invest much of their emotional and economic energy maintaining these frames. Unfortunately, frames, by their presence, impose limitations. They can often lock the disputants into misperceptions, biases, misattributions leading to an escalation in conflict between disputants. Moreover, with the passage of time, these frames tend to become reified as hallmarks of truth about the dispute and the parties to it (Moffitt, 1997, p. 37). Ironically, the framing process is also dynamic and constantly shifting (Goffman, 1974, p. 563). The process quickly moves beyond literal and fixed notions. Everyday interaction is filled with rapidly shifting frames.

> *…everyday activity itself contains quickly changing frames, many of which generate events which depart considerably from anything that might be called literal* [*p. 563*]*.*

In order to move the parties toward settlement, the mediator must draw attention to the way in which the disputants have each framed the dispute. Usually, this will involve exploration of all respective frames through *frame analysis*. Once parties become aware of their own respective frames and those of their co-disputants, the mediator can then begin to encourage them to redefine the issue in dispute, exploring alternative frames more conducive to settlement. This process of *re-framing* can occur on a number of occasions during any given mediation. Ultimately, the effective reframing ritual encourages the parties to jointly construct a meta-frame through which they can address all matters in dispute without abandoning their own interests (Fisher and Ury, 1981).

According to Fisher and Ury (1981), the reframing process is most effective when it engages the parties in a collaborative joint-problem solving exercise. This often requires a willingness on the part of all parties to undergo a significant shift from initial bargaining frames, which are often built on fixed legal positions (Putnam and Holmer, 1992, p. 128). Understandably, parties can cling fiercely to these initial fixed legal positions as a form of self-protection as there is often a great deal of fear in the bargaining process. Therefore, the mediator should approach the task of reframing delicately in order not to overwhelm or alienate any of the disputants (Rubin, Pruitt and Kim, 1994, p. 33). Mediation proceeding without the reframing ritual can leave the parties vulnerable to

burgeoning and intractable long-term conflict (Coleman, 2000, pp. 428-429; Moffitt, 1997, p. 37; Neale and Bazerman, 1992, p. 42).

Reflecting for a moment on the three major approaches to framing presented in Table 1, it is evident that mediation adds value precisely because it allows the parties not only to acknowledge and overcome biases in cognition and perception, but also to move beyond habitual patterns and assist them in reconstructing the meaning they attach to their given dispute. This can transform not only the respective parties' immediate behaviors but more importantly their respective attitudes for the long-term (Bush and Folger, 1994). Accordingly, an effective reframing process in mediation draws on all three approaches above (Putnam and Holmer, 1992, pp. 128-155).

Reframing is an essential part of mediation whether one is addressing labor-management grievances, family-relation disputes, commercial litigation, or civil rights complaints, etc. There is much support for the application of framing in such disputes (Neale and Bazerman). As mentioned above, I have chosen the family relations dispute in the vignette as a convenient example. With particular regard to family disputes, Lois Gold (1993) discusses the therapeutic role reframing can have, in moving the parties from intractable legalistic positions to a dialogue that emphasizes the emotional health and stability of all (Gold, 1993, p. 62). In her practice, she recommends mediators use express language that emphasizes healing, such as "mending", "harmony", "healing", and "curing" in order to cast the issues in a restorative light (1993, pp. 62-63).

In the vignette, without *reframing*, it is difficult to imagine these two individuals escaping an adversarial contest within the courts. However, engaging in the reframing exercise, they have an opportunity to redefine the issues in dispute. Note the hypothetical results of reframing in the vignette. *See* Table 2 below. Here, we observe several legal issues in positional language that the parties have reframed within a collaborative meta-frame through mediation.

Table 2

Hypothetical Results of a Reframing Exercise

"Who will get custody of child Bart?"	=>	*"How will we best take care of child Bart?"*
"Will we share joint custody or will one parent get sole custody of child Bart?"	=>	*"How will we develop a workable parenting plan that will best meet Bart's needs?"*
"Who will have visitation/access rights to child Bart?"	=>	*"How can we best maintain a healthy bond between child Bart and ourselves, as parents?"*
"Who will get to remain in the home?"	=>	*"What arrangement can we come up with in order to provide a stable home for child Bart while providing an equitable living arrangement for ourselves, respectively?*
"Who is liable for the mortgage on the family home and other family debts and who will pay them?"	=>	*"How will equitably determine our family debts and ensure that we each meet our respective debt obligations, including providing an equitable allocation of responsibility for the mortgage on the family home?"*

Below, *Part II* explores frame analysis in the context of Goffman's three main social metaphors, namely life as a game, drama, and ritual. In this part, the discussion shifts to practical concerns that each social metaphor raises for mediation and demonstrates the application of these metaphors to the facts in the vignette.

II. GOFFMAN'S SOCIAL METAPHORS

Goffman's celebrated work, in symbolic-interaction, on social metaphors provides a very practical way of addressing the behavior of disputants (1997: orig. 1956a). The mediator can rely on the metaphors to analyze and manage social interactions in the moments they occur. The metaphors also guide the practitioner in creating a mediating structure conducive to collaboration.

A. MEDIATION AS A GAME

Goffman argues that games serve a particular function. They allow a space in which players maximize euphoria and minimize dysphoria (Goffman, 1997, p. 129: orig. 1961). To maintain their full interest and participation, players will tend to seek games, which maximize the number of potentially positive outcomes (Goffman, 1997, p. 130: orig. 1961). Conversely, as the game outcome becomes more and more certain, the losing party is increasingly likely to concede (1997, p. 130: orig. 1961). These insights are consistent with game theory, which posits that individuals seek to maximize self-interest, seeking the greater gain whenever possible.

In addition, games that capture individuals' interest also allow the players to exhibit qualities that are valued in the larger society (1997, p. 130: orig. 1961).

> *…games give the players an opportunity to exhibit attributes valued in the wider social world, such as dexterity, strength, knowledge, intelligence, courage, and self-control* [Goffman, 1997, p. 130: orig. 1961].

Parties may seek to claim these attributes in the encounter or later outside of it. Accordingly, the most successful games share both uncertainty in potential gain and maximum potential for display of valued attributes.

According to the game metaphor, one would predict that mediations would be most successful, for all parties, when they provide each a greater number of opportunities for potential gain and opportunities to present attributes most valued in the community. The mediator is responsible for guiding the parties toward a structure that will foster these opportunities. She can do this by assisting the parties to agree on a set of ground-rules that tend to support this structure. Mediations conducted in this fashion are significantly more likely to maintain the disputants' interest and enthusiasm. If the mediator notices that the parties' level of participation begins to wane at any point during the mediation, she can quickly re-assess whether the ground-rules are still serving the goals of

the mediation game. If not, she can again enlist the support of the parties at any time to modify the structure of the game.

An interesting connection exists between the game metaphor and frame analysis. Deborah Tannen (1998) argues that the dominant cultural frame for disputing in North America is that of the *adversarial contest*. Unfortunately, this adversarial frame tends to produce a zero-sum game with distributional outcomes. That is, the gains of one party are the losses of the other, in direct inverse proportion. This frame tends to encourage the parties to chop up the problem like a piece of pie. Ironically, a pure rational choice approach, which attempts to maximize economic gains and minimize losses, will tend to fail in the long term, as evidenced in repeated iterations of the Prisoners' Dilemma game, a contest in which two prisoners are unaware of the response of their respective co-accused, when interrogated about a crime. In contrast, the collaborative or problem-solving frame tends to encourage integrative bargaining; in which disputants seek solutions that maximize the gains for both parties in a collaborative joint-problem solving exercise (Fisher and Ury, 1981, p. 56). Interestingly, in The *Prisoner's Dilemma Game* the most effective long-term strategy has proven to be an "altruistic tit-for-tat" strategy. That is, the long-run winner is the one whose default strategy is cooperation, but also the one who is willing to immediately punish any defection by the other player. After punishing the other player in any such instance of defection, the long-term successful player immediately returns to the default cooperative strategy in subsequent rounds of play. This result is borne out in Internet applications, with literally thousands of players and thousands of rounds of play or bargaining events (Felkin, 2001). In sum, the collaborative problem-solving game metaphor provides the *frame* or opportunity for this kind of self-serving reciprocal altruism.

Accordingly, in the vignette, the mediator would encourage Robyn and Leslie to maximize their mutual gains in creating a stable parenting plan. Conversely, the mediator would discourage one parent from pitting his interests against those of the other and the best interests of the child. She would do this by reminding the parties that they are more likely to have an opportunity to demonstrate socially valued characteristics such as creativity and courage in the collaborative mediation game than in traditional adversarial litigation. Second, she would remind Robyn and Leslie that they can optimize the number of respective potential gains in the mediation game because they have mutual control over the process, whereas they would face greater uncertainty in gains and losses in an equivalent court proceeding, all other things being equal. In mediation practice, this is sometimes referred to as reminding the clients of their best alternative to a negotiated agreement ("BATNA", Fisher and Ury, 1981).

B. MEDIATION AS A DRAMA

Goffman (1997, p. 21: orig. 1956a) also provides a dramaturgical analysis of social behavior. According to this analysis, social interaction involves theatrical performances in which individuals communicate with each other. In the company of others, we notice the inherent gap which lies between our inner

feelings and the impressions we share with others. Goffman argues that individuals naturally give performances that further their enlightened self-interest (1997, p. 21: orig. 1956a). Furthermore, the appearance of spontaneity, despite painstaking staging, lends an air of greater credibility. In general, we seek an impression that appears to respect social norms in order to gain the favor of others. Goffman characterizes this process as *impression management*. The implication is that we don't always say what we mean and we don't always mean what we say. Moreover, there is frequently an instrumental component to our actions (1997, p. 22: orig. 1956a).

Mediation is a drama. The parties have a strong motivation to manage *impressions* not just with each other in the mediation room but also with the mediator and a host of other potentially concerned stake-holders. These are *back-stage* third parties who may include lawyers, accountants, family members, employers, and the like. Note in the vignette, both Robyn and Leslie were referred to mediation by their respective lawyers. *Back-stage*, each of these parties will have likely developed presumptions regarding the mediation process and its potential outcomes. Furthermore, both Leslie and Robyn may have concerned relatives advising them. Often, these *back-stage* third parties hold the ultimate decision-making authority. Moreover, they often function as gate-keepers. Determining each person's respective audience is vital to understanding the effects of *impression management* on any given individual. The mediator, engaging parties, *front-stage*, needs to ascertain the influence and demands of these *back-stage* gatekeepers. In the vignette, the mediator would simply ask Leslie and Robyn in caucus (private session) about these matters, thereby venturing *back-stage* with each. Hence, a key task for the mediator is to recognize when and how *impression management* may hinder or interfere with the settlement process.

It is important to realize that, in mediation, all participants, including the mediator, are engaging in *impression management*. The mediator not only has to manage impressions with his or her clients but also with his or her own professional associations and the like. The mediator must therefore identify his or her own impression-management needs and how they may also hinder or interfere with the settlement process. In the vignette, for example, the mediator may know the two referring lawyers. She will likely seek further referrals and therefore have a natural desire to appear to be doing a good job in their eyes. The potential danger is that their unacknowledged influence as gatekeepers could steer Robyn and Leslie toward an inappropriate settlement. For example, Robyn and Leslie might feel compelled to enter into the particular terms of a separation agreement in order to mollify their new respective partners, rather than to meet their own particular interests. Mediators should be careful not to underestimate this potential source of influence.

Frame analysis in mediation includes the exploration of differences between *back-stage* frame development and *front-stage* issue-frame presentation. In the vignette, for example, Leslie and Robyn may confront the mediator initially with adversarial posturing, throwing out various demands. Rather than reacting in a knee-jerk fashion the mediator should set about

exploring any underlying and/or hidden interests *front-stage* adversarial posturing may serve. Note that interests may be *substantive*, e.g., a concern over precedent, *psychological*, e.g., a fear for one's safety or one's well-being, or *procedural*, i.e., a desire to meet a deadline (Fisher and Ury, 1981; Moore 1996, p.67). In the vignette, it would likely be more effective for the mediator to explore all these *substantive,* psychological, and procedural interests in caucus with Leslie and Robyn before moving to the joint session, because custody matters tend to be of an extremely sensitive nature. Leslie may not want to reveal that she can no longer cope with the dual responsibility of a demanding job and the care required of child Bart. In joint session she may be tempted to frame the issue in dispute as an insistence on sole-custody in fear of losing control over decision-making power regarding child Bart. In caucus, out of Robyn's earshot, she would have an opportunity to reveal her interest in her child's well-being and her need to maintain a livelihood. Thus, the mediator uses the caucus ritual *back-stage* to discuss interests that may or may not surface in the later joint session.

Dramaturgical analysis emphasizes the importance of the need for parties to save *face*. In fact, Goffman views *face* as a person's claim to a particular social value in the course of conduct.

> *…the positive social value a person effectively claims for himself by the line others assume he has taken during a particular contact* [Goffman, 1997: orig. 1955]*.*

Face, then, can be seen as a claim to a particular positive identity in the eyes of others. The need to save *face* can vary with the culture within which the disputants find themselves (Barnes, 2001). Moving between caucus and joint session during mediation can help parties maintain *face*. It is essential for the integrity of the mediation process that the mediator guard confidences, according to client directions, when returning to joint-session. If the mediator has gained the trust and confidence of a given party, the latter is more likely to reveal potentially embarrassing facts to the mediator alone. In the vignette, the mediator might reframe Leslie's claim for sole custody as a genuine concern for Bart and her need to take care of her own livelihood. This is a subtle shift but the emphasis is crucial for Leslie to save face as a caring and responsible parent. Thus, in caucus the mediator has an opportunity to sort out legitimate underlying interests in order to move beyond adversarial posturing without causing the individual to lose *face*.

It is important for the mediator to manage his or her own impressions with clients. Unlike a judge who gains his or her power through the authority of the State, the mediator gains authority by express agreement between the parties. Thus, all parties including the mediator become economically and emotionally invested in the appearance of the mediator's authority and her willingness to use it. It is important for mediators to maintain this appearance of legitimate authority throughout the mediation in all interventions. The parties will likely assume a

demeanor of deference, as they have a mutual interest in the maintenance of the mediator's authority.

Occasionally, however, when tension rises in the mediation room, one or more of the disputants may challenge the mediator. The latter must not appear to avoid these challenges. These challenges are often a way to test the mediator's commitment to the role she is playing. Challenges can also be a way to undermine the authority of the mediator to gain greater control over the mediation process, i.e., to co-opt the mediator. It is important for the mediator to resist such challenges to be fair to the opposing party. In the vignette, Robyn might ask the mediator to define *sole custody*. The most effective response, particularly for non-lawyers, is to explore the correlative interests behind the legal notion of *sole custody*, rather than being drawn into a debate over the precise meaning of this legal term. Here, Robyn may actually be concerned about having adequate time with child Bart, but hides this interest in the *sole custody* legal question. In sum, the most effective response is often to avoid legal debates and to explore the interests underlying such questions.

C.   MEDIATION AS A RITUAL

Goffman posits that human beings structure their social interaction in the form of various rituals. By *interaction ritual* he includes all verbal and non-verbal behaviors that contain signs that orient one to others in the social environment.

> *It is that class of events which occurs during co-presence and by virtue of co-presence. The ultimate behavioral materials are the glances, gestures, positionings, and verbal statements that people continuously feed into the situation, whether intended or not. These are the external signs of orientation and involvement- states of mind and body not ordinarily examined with respect to their social organization* [Goffman, 1967, p. 1].

Goffman also views the ritual, generally, as:

> *…a perfunctory, conventionalized act through which an individual portrays his respect and regard for some object of ultimate value to that object of ultimate value or to its stand-in* [1967, p. 114].

He argues that rituals honoring supernatural entities are quickly disappearing in contemporary society. What remains in abundance are the everyday *interaction rituals* (1967, p. 115). It's predominantly these every-day *interaction rituals* that are significant for mediation.

Goffman follows Durkheim's lead in bifurcating rituals into *negative* and *positive* forms. *Negative* rituals involve interdictions, avoidance, and staying away. *Positive* rituals consist of active behavior on the part of the doer in approaching the recipient (1967, p. 115). According to his analysis, positive

rituals require response in some form, i.e., some form of recognition or affirmation so that the other acknowledges the relationship, in a supportive interchange. Negative rituals do not. Nevertheless, negative rituals can still lead to dialogue but often in an indirect fashion. In general, with the negative ritual, the doer is giving the recipient space.

Both ritual forms are useful in mediation. Interestingly, Sara Cobb (2001, p. 1017) argues that the most important function of mediation is to create a ritualized *sacred-space*, within which disputants can freely explore their respective values and beliefs. By establishing frames that invite the parties to a joint problem-solving exercise and by establishing ground-rules at the commencement of mediation, the mediator leads the parties in a series of rituals encouraging a genre of communicative action or dialogue (Amadei and Lehrburger, 1997, pp. 2-8). At times, she employs the negative form in allowing the disputants to retreat to their own private space. For example, the mediator may acknowledge the need to stop the mediation so that disputants may consult personal advisors. At other times, she may actively engage or, even, confront the parties in a respectful fashion, providing them with a much needed reality-check. The latter is an example of a positive mediation ritual (Waldman, 1997, pp. 1–25). Both ritual forms are reasonably within the mediator's authority.

1. Ritual Stages in Mediation

A number of different protocols have surfaced in contemporary mediation practice. The most prominent of these is based on the ground-breaking negotiation work by Fisher and Ury (1981), now commonly known as the *Harvard Method (*Stone, Patton and Heen, 1999). This model has risen to prominence in numerous trainings across North America. For example, Gordon Sloan (1998) has incorporated the *Harvard Method* into his Civil Mediation Training for the Continuing Legal Education Society of British Columbia. Underpinning this experience-driven model are the elements of Goffman's theory. Depending on its application the model consists of four principle stages preceded by a period of preparation, which includes initial client contact, contracting, and review of relevant documents. The model also envisages a follow-up period where the mediator may clarify matters with lawyers and other third parties involved in the resolution of the dispute. The heart of the model lies in the ritual stages through which the mediator leads the clients. See Figure 1.

Figure 1

Ritual Stages in Mediation

Preparation ————————→ Stage One

Follow-up ←———————— Stage Four ⇢ Stage Two

Stage Three
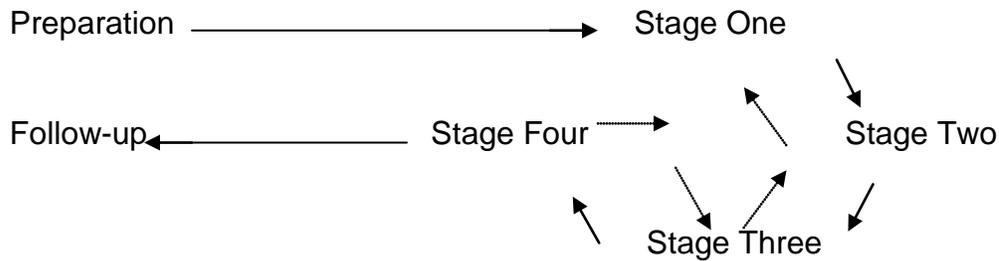
Some practitioners, in an effort to elaborate the model, have included as many as twelve stages, but the basic functions remain the same (Moore, 1996). It shares features in common with numerous other models and therefore provides a useful exemplar of the ritual processes involved in mediation, for example it is a close cousin to the Hawaiian Mediation Model with the exception that the latter emphasizes the role of caucusing (Barkai, 1992).

Stage One Rituals

> The set of collaborative rituals at this stage include:
> - *The mediator's opening statement;*
> - *the greetings;*
> - *the summary description of mediation;*
> - *the signing of the agreement to mediate; and*
> - *the joint construction of ground-rules or guidelines for participation.*

The joint-construction of ground-rules is the most important ritual at this stage. The mediator provides the structure for later collaborative problem solving by encouraging the parties to work jointly on the adoption of ground-rules. This positive ritual serves three distinct functions. First, the parties tacitly affirm the mediator's authority through this exercise, in each other's presence. Second, the parties have an opportunity to work jointly on procedural matters before attempting to tackle larger substantive goals. Third, it provides the authority for a positive intervention for all parties, including the mediator. When one of the disputants breaches a ground-rule at any time during the mediation, the mediator or any party can hold that person accountable for the infraction. In this manner, the parties are restricted from straying from the matter to be resolved. It works to reduce the prevalence of dirty tricks. Whenever there is such an infraction, the mediator acknowledges the breach and provides the disputants with the opportunity to renegotiate the ground rules, should they so desire. The breaching party must always acknowledge the breach before proceeding. Ethical practice requires the mediator to suspend mediation until the breach is remedied to the satisfaction of all parties. In general, this protocol sets up habitual-frame

categories from the outset conducive to joint-problem-solving within the mediation room (Neale and Bazerman, 1991, p. 142). In particular, the joint-construction of this opening frame establishes thereafter the mediator's authority to challenge the parties' respective limitations, which often surface as misattributions, autistic hostility, reactive devaluation and other cognitive and behavioral biases. In sum, the formation of ground rules, a positive ritual, guards the integrity of the mediation process.

Stage Two Rituals

The second set of rituals involves challenging the parties to an exercise in *reframing.* This is the point at which the mediator begins to reframe the issues in dispute a collaborative fashion, drawing the disputants gently away from the adversarial model. At this point, the mediator is carefully redefining the parties' task as one of joint problem solving. Practitioners need to be mindful when reframing not to alienate one side or the other. It is likely that the same frame that could be viewed as accurate and fair from one side might be viewed as unfair and inaccurate from the other (1991, pp. 47-48). Therefore, the mediator should be careful to use neutral, inclusive language, avoiding legalistic definitions when reframing issues.

From the linguistic issue development approach, the successful reframing ritual typically employs inclusive language that is *conjunctive* rather than *disjunctive* in its structure. For example, phrases such as "***WHETHER-OR-NOT***…" or "***EITHER…OR***" tend to yield distributional responses, whereas frames beginning with the phrase "***HOW-TO-DETERMINE***…" and "***WHAT***…" tend to yield integrative responses. Note the difference with the frames in the following examples, in which the mediator reframes the disjunctive language, transforming it into its conjunctive grammatical counterpart.

> ***Robyn****: "The issue today is **WHETHER OR NOT** Leslie is going to be responsible for his part of the family debts!" (Disjunctive "whether- or-not" will tend to support an adversarial frame).*
>
> ***Mediator****: "The issue today is **HOW** we can determine an equitable division of the family debts. Would that be accurate?" (Conjunctive "how…we can determine" moves the party away from a discrete "yes/no" response to an expanded conjunctive issue frame).*

See Table 2 for other examples of the collaborative issue-framing ritual. Note these are very subtle shifts, but they are nevertheless of great significance in mediation. Note further that the mediator seeks an affirmation from the disputant after each and every reframe. The mediator might have to reframe a number of times before achieving agreement with the disputants. Once the frame is agreed-upon, the mediator then turns to the co-disputant and performs the same ritual. For the sake of convenience, let's assume that Leslie eventually commits to the following frame after a number of reframes.

> **Mediator**: *"The issue to resolve is **HOW** we can accurately determine an equitable division of family assets. Is that accurate?"*
>
> **Leslie**: *"Yes."*

Now, taking both Leslie and Robyn's separate issues, the mediator merges the two in a meta-issue frame, conjoining the two separate elements, again using language that is inclusive in content and neutral in nature.

> **Mediator**: *"The issue to resolve today is **HOW** we might accurately determine fair responsibility for family debts **AND** determine an equitable division of family assets. Would that be about right?"*

Once the parties commit to this conjunctive issue frame, the mediator has achieved a structure within which the parties can communicate with each other without losing face or legal ground. Notice, in the example, that the mediator is careful to construct an issue frame that commits neither party to any liability or entitlement to any of these family debts. Instead, she simply provides a structure within which both parties are at liberty to express their respective interests, without the need to resort to legalistic posturing. Further, she provides clear boundaries within which the parties must focus their discussion. The parties and the mediator may use the joint issue frame in order to determine relevancy of matters brought into the discussion. This positive ritual works well for all concerned, as long as all parties remain committed to it.

It is the mediator's task to hold the parties to the joint issue frame, even during emotionally tense periods. Often, it is especially in these moments that such collaborative issue frames prove their worth. Nevertheless, if the mediator notices any party's commitment to the joint issue frame waning, she must quickly draw attention to it. If the party no longer acknowledges the particular frame as relevant, then the mediator has at least three courses of action. First, she may seek to persuade the breaching party of its relevance before allowing the mediation to continue. Second, she may engage all parties in seeking a new joint issue frame, cycling back to the beginning of *Stage Two*. Third, she may cycle all the way back to *Stage One* and seek clarification and commitment on the agreed-upon ground rules. unithout strong evidence of commitment to both the ground rules and the joint issue frame, it is unwise to proceed to the next stage. Without such commitment, the mediator would risk exposing one or all of the parties to dirty tricks and the bite of hidden agendas.

Stage Three Rituals

The third set of rituals involves the mediator probing the parties for any and all interests relevant to the issue-frame. As during *Stage Two*, the mediator does not allow the parties to step beyond the issue frame (without renegotiation), in order to prevent distractions, dirty tactics, and bad faith bargaining. This aspect of the Harvard Model distinguishes it from a culture of therapy as all discussions must remain relevant to the joint issue frame.

At *Stage Three*, the rituals consist of asking open-ended questions of the parties and *affirming* and *rephrasing* the rational content of the responses, more importantly it consists of *paraphrasing* both the rational content with the emotional substance of the dispute without skipping a beat. This latter act of skillful paraphrasing is precisely the appearance of spontaneity that lends credibility to the ritual despite oft-painstaking staging (Goffman, 1997, p.21: orig. 1956a). This is the exact location at which mediation practice and theory, a la Goffman, converge. Until all relevant interests are evident to the satisfaction of all parties, the mediator continues to take the parties through this question-and-answer process. As we have seen, the parties usually start by expressing legalistic positions and come to restate their positions in terms of underlying interests. This process requires that the mediator listen actively to concerns that the parties may not wish to express openly for fear of embarrassment, liability, exposure, or any other related concern. As noted earlier, where matters are particularly sensitive, the mediator can make full use of caucusing. The mediator does not enter *Stage Four* until she has fleshed out all relevant interests to the satisfaction of all parties. To do so might yield solutions that do not accurately reflect the true interests of the parties, a common error.

Stage Four Rituals

Once all relevant interests have surfaced, the mediator invites the parties to engage in a joint brainstorming ritual. She first invites the parties to invent options for mutual gain. Only once all possible solutions are on the table do the parties engage in judging the viability of each idea. In this way, the parties have an opportunity to judge each and every idea in light of all others. Only at this second phase should the parties start to eliminate potential solutions that do not meet reality checks. To start eliminating as the parties raise the options tends to fetter the range and quality of potential solutions. In this stage, without firm direction from the mediator the parties can retreat to earlier habitual frame categories out of fear of the process or distrust of each other. Timing is very important in this brain-storming stage. The latter requires a judicious application of both positive rituals, such as reality checks, in conjunction with negative rituals, such as those that create *sacred-space* (Cobb, 2001).

2. AVOIDING ALIENATION THROUGH RESPONSIVE MEDIATION RITUALS

What makes Goffman's view of alienation distinct from other social theorists, such as Karl Marx (1964) and Max Weber (1978: orig. 1921) is Goffman's view that alienation is part and parcel of the communication process. Marx saw this condition as the inevitable consequence of opposing interests, namely those of owners versus those of workers. Thus for Marx reducing or eliminating alienation would require restructuring the material conditions, which produce this opposition. Similarly, Weber viewed alienation as the inevitable result of increasing bureaucracy associated with modernity, the *iron cage.* In contrast, Goffman does not view alienation as inevitable and locates it within the dynamics of everyday social interaction. Goffman points to three distinct forms of

alienation, namely *external preoccupation, self-consciousness, and interaction-consciousness* (1967, pp. 117-119).

First, *external pre-occupation* involves focusing one's attention on some object, person, or thing other than the agreed-upon matter in the conversation. In mediator parlance, these would include interests falling outside of the joint issue-frame. Thus, in the vignette, for example, one might expect Leslie to exhibit feelings of alienation where, suddenly, in the middle of an intense emotional exchange about the welfare of child Bart, Robyn begins to babble about some unrelated legal rule. Note that, if the mediator were to remain passive with regard to this behavior, both Leslie and Robyn would likely begin to feel alienated.

Second, *self-consciousness* involves turning the focus inward away from the matter in discussion. These would include feelings and emotions unrelated to the matter in dispute between the parties, as determined by the joint issue-frame. Where the parties share a lengthy social history, they often express these feelings in terms of blame or vilification for past events unrelated to the contemporary issues the parties are attempting to resolve. In the vignette, for example, Leslie might suddenly burst into tears, blaming Robyn for a bygone affair with the office secretary. While this may be an event for private therapy, it is likely to hinder the party's attempts to construct a new parenting plan and is likely to alienate Robyn, in the process.

Third, *interaction-consciousness* consists of turning the attention away from the matter for discussion toward the parties' interaction. This involves a pre-occupation with gestures and appearance over the substance of the discussion, as determined by the joint issue-frame. In the vignette, for example, one can envision Robyn attempting to mock or mimic Leslie's gestures associated with the emotional outburst about the bygone affair. If unchecked by the mediator, Robyn's alienation expressed in mockery would likely, in turn, increase Leslie's sense of alienation, as she would perceive it as an unwillingness to listen earnestly to her interests.

All of the above behaviors are potentially irritating and can work to misdirect the focus from the matters the parties have agreed to discuss. Moreover, such behaviors are also evidence of alienation and can work to alienate the co-disputant if the mediator fails to address them. Goffman reminds us that alienation is contagious precisely because it is situated in social exchanges and interactions.

Another notable contribution of Goffman's notion of *alienation* generally is evident in his assertion that some subcultures tolerate a less strict conversational discipline (1967, p. 124). In short, some speakers are sloppier than others in formulating their thoughts, depending on their backgrounds. Again, mediation can add value overcoming such inherent differences by insisting parties clearly spell out to the satisfaction of all parties all matters relevant to the dispute. In the discussion of the vignette, note the example in which the mediator has both Leslie and Robyn commit to a fair determination of responsibility for the family debt and an equitable division of the family assets, together, so that one matter is clearly set off against another in a global fashion. Framing matters in this global

fashion in mediation tends to reduce the likelihood of sloppy thinking as well as convoluted and muddled legal arguments.

At certain times, in mediation, lapses in attention are truly indicative of dirty tricks or underhanded tactics. At other times, however, they represent a host of other intentions consistent with different bargaining preferences and communication styles. Clearly, therefore, the duty rests upon the mediator to assist the parties to clarify the parties' respective intentions at every turn in order to facilitate greater communication and, in so doing, reduce *alienation* in its various forms (Neale and Bazerman, 1991, p. 47).

3. RESPECTING GENDER PREFERENCE IN FRAMING RITUALS

Goffman posits differences in the frames and behavioral codes of men and women. He does not assert that one gender is superior to the other. Rather, he simply draws attention to the fact that our social structure imposes different expectations on women than it does on men (Goffman, 1997, p. 201: orig. 1977).

> *In modern industrial society, as apparently in all others, sex is at the base of a fundamental code in accordance with which social interactions and social structures are built up, a code which also establishes the conceptions individuals have concerning their fundamental human nature. This is an oft stated proposition, but until recently its awesomely ramified significance escaped us* [1997, p. 201: orig. 1977].

For mediation, this observation is two-fold. First, the mediator should be aware that men and women might be predisposed to bargain differently, relying on and expecting different negotiating rituals. If the mediator is to successfully structure joint-problem solving negotiation exercises then she must acknowledge and validate different expectations and behaviors associated with each gender.

Second, there may actually be frame preferences associated with each gender. For example, Carol Gilligan (1982) demonstrates that women tend to favor an *ethic of care* over a *justice* frame, when confronting moral dilemmas. Essentially, women tend to prefer to value the care of others as individuals over the maintenance of abstract universal principles. Accordingly, if a male mediator were to frame the issues in dispute exclusively in the language of justice, and not in terms of the parties' well-being and care, this may work to alienate the female disputants, despite sincere intentions to the contrary. One can see the obverse being equally true for a female mediator with male disputants. Therefore, a truly collaborative frame between the genders would arguably embrace both a need for principles of justice and the ethic of care. In short, Gilligan's work supports Goffman's assertion that gender-specific framing preferences matter. Moreover, her work moves the practice of mediation beyond the single-gender perspective of the renowned psychologist, Lawrence Kohlberg. The lesson for mediators is to always remain sensitive to potential gender framing preferences during mediation.

In the vignette, for example, instead of simply including equitable apportionment of family debt and a just division of family assets, the mediator might include the phrase, "to the satisfaction and well-being of both of you." Thus, the comment reframed with the element of the *care ethic* would be as follows:

> *"What we are here to determine today is an equitable apportionment of family debt and a just division of family assets that is to the satisfaction and well-being of both of you. Is that accurate?"*

Interestingly, these seemingly minor adjustments in mediation frames and associated rituals can make a very real difference as to whether a dispute is resolved or not during mediation.

CONCLUSION

Symbolical-interaction sociology, and, in particular, the foundational work of Erving Goffman, is extremely useful to mediators. It explores and makes sense of social interaction and disputing behavior a practical level and provides clinical sociological tools to assist mediators in their work. *Frame analysis* offers mediators a practical tool for assessing and managing the intellectual, emotional, and behavioral responses of disputants. Moreover, *frame analysis* guides mediators in assisting disputants to re-orient their respective responses both to the issues in dispute and to their co-disputants. Mediators who apply frame analysis in their work can create greater opportunities for meaningful; dialogue and settlement. The *game, drama, and ritual* metaphors also offer simple but powerful analytic tools for guiding clients through terrain which would otherwise be chaotic and, at times, overwhelming. Mediators committed to enhancing their practices as well as researchers in search of a sound theoretical base for effective mediation will benefit substantially by studying the concepts of symbolic interactionism and, in particular, the insights of Erving Goffman.

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[i] For those readers less familiar with mediation, the following discussion uses it as a term of art. The Dictionary of Conflict Resolution defines *mediation* as: *"the generic term encompassing certain conciliatory or non-adjudicative dispute resolution processes that involve intervention by a party not involved in the dispute"* (Yarn, 1999, p. 272).