

**INTEGRATING SERVICES FOR VICTIMS OF INTIMATE PARTNER
VIOLENCE INTO MEDIATION CENTERS**

by

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DEDICATION

This thesis is dedicated my parents Jacob and Marcy Aufschauer, who model compassion and creative problem solving in all of their relationships.

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ABSTRACT

This thesis proposes replication of the protocol of the Mediation Center of Dutchess County, New York, which is the only mediation center in the United States to offer counseling services for victims who have a history of intimate partner violence and are seeking divorce and/or child custody agreements with their spouses.

As the practice currently exists, couples with a history of intimate partner violence can seek resources specific to ending the violence or specific to obtaining a divorce through the formal judicial system. If a couple who has a history of intimate partner violence wants to go to a mediation center instead of going to court to resolve issues surrounding a divorce or child custody agreement; however, they are screened out and referred to programs for offender rehabilitation or victim counseling. This thesis argues that the gap in services for recovering victims and perpetrators of intimate partner violence could be best served by restorative-justice-based alternative dispute resolution in the style of the protocol of the Mediation Center of Dutchess County, New York.

After a brief review of the literature on intimate partner violence, chapter one outlines the history of policies pertaining to intimate partner violence as well as my own insights developed in direct observation of the experiences of victims of such violence within the criminal justice system. Chapters two and three discuss

scholarship on restorative justice and alternative dispute resolution as it pertains to the described population. Chapter four includes the interviews with four practitioners who discuss possible obstacles and specific suggestions for integrating counseling into mediation centers. Chapter five outlines applied lessons from the literature and from interviews on how the proposed mediation centers would run

Chapter 1

INTRODUCTION

1.1 The Scholarship on Intimate Partner Violence and the Origins of this Thesis

This thesis proposes replication of the protocol of the Mediation Center of Dutchess County, New York, which is the only mediation center in the United States to offer counseling services for victims who have a history of intimate partner violence and are seeking divorce and/or child custody agreements with their spouses.

As the practice currently exists, couples with a history of intimate partner violence can seek resources specific to ending the violence or specific to obtaining a divorce through the formal judicial system. While 80% of battered women in the United States are able to flee abusive relationships, it takes a victim of intimate partner violence an average of eight times to try and leave the relationship before leaving for good (LaViolette and Barnett 10). As a result of having to overcome the obstacles of leaving the abusive situation to seek a divorce, a victim of intimate partner violence may require more support services during the divorce process than would a person who is not a victim of spousal abuse (DePorto and Miller “Protocol”). Mediation centers offer a personalized alternative dispute resolution process with mediators who aim to include both clients’ voices equally in the process of creating a divorce and/or

child custody agreement. If a couple who has a history of intimate partner violence wants to go to a mediation center instead of going to court to resolve issues surrounding a divorce or child custody agreement, however, they are screened out and referred to programs for offender rehabilitation or victim counseling because mediators fear that the perpetrator of the abuse will continue to manipulate the victim during the mediation process. This thesis argues that the gap in services for recovering victims and perpetrators of intimate partner violence could be best served by restorative-justice-based alternative dispute resolution in the style of the protocol of the Mediation Center of Dutchess County, New York. The protocol does not aim to supplant prosecution of intimate partner violence, but rather to produce a more satisfactory divorce and/or child custody agreement which allows the victim extra support services to make sure her voice is heard in the process of creating an agreement.

Chapters one through three are devoted to a study of the populations who would especially benefit from the protocol, scholarship on mediation and restorative justice, and on methods of fostering collaboration between human services agencies. In order for mediation to be applied to divorcing couples who have sought it after a history of intimate partner violence, a dramatic shift in the protocols of most divorce mediation centers would be needed. The Mediation Center of Dutchess County has pioneered this shift and is succeeding in its integration of human services (DePorto and Miller “Honoring”).

In chapter four I review the thoughts on this protocol of four professionals working on issues related to the topic of mediation and intimate partner violence. I also address their thoughts on possible implementation of similar services in other community mediation centers.

In chapter five I set forth my analysis of how the scholarship on merging human services can guide an effort to integrate resources for victims and perpetrators of intimate partner violence in mediation centers nationwide. This thesis draws on the particular, successful experience of Dutchess County and on the general literature on inter-agency collaboration for a client-centered organizational collaboration to propose the development of such services across the country for this population.

I began this project in summer 2007 when I interned as a telephone counselor at the Women's Law Project in Philadelphia, a not-for-profit agency that provides legal information to women who cannot afford representation in Family Court. As part of the internship, I observed hearings requesting court orders for protections from abuse in Philadelphia Family Court twice a week. A "protection from abuse" is a restraining order telling the defendant to stay away from and avoid communicating with the plaintiff. A protection from abuse may also be used to evict someone from a common residence and gain child custody. During the observations, I noticed that often, if the alleged perpetrator started to admit that he had in fact inflicted violence, his lawyer would silence him. Similarly, if the woman filing for an order of protection from abuse admitted that her partner could display any qualities other than aggression,

her lawyer would silence her, thereby eliminating the chance of creating an honest dialogue about the dynamics of the situation. Also, many times if a judge decided not to grant a protection from abuse, the couple would walk out of the courtroom without any resources on how to escape from the violence.

I began to wonder if there was a better way to help victims and perpetrators of intimate partner violence other than by the combination of hearings for protection from abuse orders and outright prosecution. Some of the female victims clearly wanted to prosecute their perpetrators should any future violence arise, but others were not interested in pursuing this option. When a woman called the Women's Law Project and spoke to me about her situation of intimate partner violence, I referred her to legal authorities, domestic violence hotlines, and battered women's shelters. But I wondered whether these resources failed to meet the needs of some of the victims of intimate partner violence. I wanted to understand more about intimate partner violence and the ways of dealing with the issue besides prosecuting through the adversarial legal system or referring victims to hotlines.

In the summer of 2008, I began to review the literature on the dynamics of intimate partner violence. Some scholars study this violence in terms of the psychological effects on the victims and perpetrators. These scholars believe that individual or group counseling is the best way to treat victims and perpetrators and that by re-socializing the perpetrators and restoring autonomy and dignity to the victims, future violence will be mitigated (Lee and Sebold, Walker). Some scholars are

interested in how one's personal background affects susceptibility towards becoming a victim or perpetrator of violence (Ayyub, Biar-Meritt, Walker). Some other scholars look at socio-economic status, religion, and race; they note that people from ethnic or religious minorities and from certain socio-economic groups often do not feel they are afforded protection by the police or respect within the court system. (Enger, Interviewee C, Nason-Clark).

Some scholars hope that by concentrating on how the laws failed to protect victims in the past, current and future law makers will be able to offer better laws. (Sheffield, Hampton).

Some say that mandatory arrest and prosecution policies will deter violence. (Straus). Another group contends that such policies do not empower victims because they take away victims' choice of whether or not to prosecute and do not reduce violence (Dasgupta, Ford).

I was convinced by the literature and by my own observations of the detrimental effect of taking even more power away from the victim by forcing her to engage in adversarial behavior in the courtroom and requiring her to allow the state to assume the role of victim, regardless of whether she plans to have a future relationship, albeit in a different form, with the perpetrator. This conclusion led me to examine the scholarship on restorative justice as it related to intimate partner violence.

Almost all of the scholarship on restorative justice mediation and alternative dispute resolution cautions against using the alternative problem-solving methods for

intimate partner violence and says that mediation should only be used for minor, non-violent crimes, such as petty theft or non-violent crime committed by juveniles (Acorn, Daly and Stubbs, Hudson, McGillis, Walker). There is a minority, however, that does advocate using restorative justice for cases beyond these categories, including violent crime such as assault, rape, and intimate partner violence (Braithwaite, Delgado).

At first I became convinced from interviews with family court mediators, the literature on the dynamics of intimate partner violence, and the arguments against using restorative justice for intimate partner violence, that in mediation the danger of the perpetrator using the sessions to further terrorize and take advantage of the victim was too great to use alternative dispute resolution to mediate between victims and perpetrators of intimate partner violence. However, attending a November 2008 conference of the Council of New York Family and Divorce Mediators in New York City introduced me to a new category of how to use mediation without compromising the safety of the victims.

At the conference, I met Dr. Dee DePorto and Jody Miller, co-executives of the Mediation Center of Dutchess County New York. DePorto runs Battered Women's Services in Dutchess County, and Miller runs the Mediation Center. The two spoke about a collaboration between the two agencies that resulted in a protocol of how to mediate with spouses with a history of intimate partner violence who are seeking a divorce or a child custody agreement. In the protocol, an intimate partner violence survivor receives counseling and develops a safety plan before she and her partner go

through the divorce or child custody mediation process. Dutchess County is the only mediation center to have an ongoing protocol specifically targeted for couples with a history of intimate partner violence who are seeking divorce or child custody agreements (DePorto and Miller “Protocol”).

Inspired by the protocol, I narrowed my search for the best ways to help victims and perpetrators of intimate partner violence find resolution outside of prosecution. I began to focus specifically on looking for scholarship that bore on the general question of whether services for battered women should and/or could be integrated with legal mediation services for divorcing couples who have a history of intimate partner violence. To begin to answer this question, I examined the traditional options available to victims of intimate partner violence such as going to battered women’s shelters, prosecuting the perpetrator, and asking for a divorce. I looked at literature on mediation and restorative justice in order to find out whether victims of intimate partner violence could be served by seeking divorce settlements through these avenues, or whether they would be better off just prosecuting the batterer or asking for a divorce in court. When I concluded that the victims would be best served by services in the style of the protocol in which counseling and divorce mediation exist in tandem and not as separate services, I examined literature on how to bring counseling services into mediation services in the style of the Mediation Center of Dutchess County, New York.

There is a significant scholarly literature on the benefits of combining social services previously kept separate because of separate administrative philosophies. This literature both supports as a general matter the initiative taken by Dutchess County and offers general guidelines for future efforts by other mediation centers to branch out in a similar direction for this particular population.

1.2 Evolution of Current Policy on Intimate Partner Violence

This section will present a review of the evolution of current policy towards perpetrators of intimate partner violence. In 1641 the Puritans in Plymouth colony created the first law in British North America against wife beating; however, the law was not actually enforced. Plymouth colony tried again in 1672 and instituted a similar law; this also was not enforced. There were no other attempts at such laws until 1850 (Hampton et al. 120). Common law required a husband to be legally responsible for his wife and allowed that he could use force to reprimand her. This created a mainstream justification for the continued practice of wife battering as a means to ensure obedience.

Despite resistance to enforcing laws against domestic violence, some reforms were successful in protecting women from spousal abuse. In 1866 the Supreme Court of North Carolina ruled in *State v. Rhodes* (61 N.C. 453) that a husband could hit his wife only to a moderate degree. Over the next two decades, The

Women's Christian Temperance Union took on the role as advocate for victims when it linked domestic violence to use of alcohol by the husband and lobbied for protection for battered women in addition to lobbying for prohibition. The end of the temperance movement also reduced interest in domestic violence during the first quarter of the twentieth century, and it was not put back on the public agenda until the women's movement of the late 1960s. The first battered women's shelters were opened in the early 1970s. Movements since then have continued to push intimate partner violence further into the public consciousness (Hampton et al.).

Legal provisions to assist survivors of intimate partner violence were established by the federal Victim's Compensation Act of 1984 and were later supplemented by the 1994 Violence Against Women Act. The provisions made it so women could obtain restraining orders without needing an attorney and could have access to more victims' support services such as advocates and family support networks (Walker 194). As a result of the removal of interspousal tort immunity, which occurred in the late 1970s and early 1980s on a state by state basis, a victim can now sue her abusive spouse for damages even if the two are still married. Accused perpetrators of intimate partner violence, who avoid showing up to a trial in which the victim is requesting an order granting protection from abuse, can nonetheless be issued such an order despite their absence (Walker 195).

Following the move during the late 1970s and early 1980s towards more willingness on the part of the courts to grant protections for abuse on an *ex parte* basis,

some intimate violence scholars began to advocate instituting policies of mandatory arrest (Berk, Daly, Goodman, Hudson, Maxwell). Because of these policies, when police were called to a house for a case of domestic violence, there would then automatically be an arrest. However, if both husband and wife claimed the other as the perpetrator, then both would be arrested. Dual arrest as a policy led to an increase in arrests of women during calls to the police regarding intimate partner violence (Dasgupta 220). Victims' advocates became aware that the perpetrator would sometimes threaten to call the police and say that he had been the victim as a way to scare the victim from filing a report of her own (Walker 196).

Victims started to become aware that if a case went to court, then they no longer had any say in how the issue was treated by the legal authorities because of mandatory prosecution policies. As a result of mandatory prosecution policies, the same element of coercion is used on a victim that is used on alleged perpetrators of violence in family courts. In San Diego, if a victim does not show up to court or shows up but refuses to testify, she will be arrested. Often, fear of the offenders' retribution after testimony prevents victims from appearing, despite the legal requirement to do so. Although courts tell victims that they will be protected after providing testimony, there is no way to guarantee the victims such protection. Moreover, if a victim does agree to provide testimony but the case is thrown out, the court abandons the victim, leaving her at an even greater risk of violence. Mimi Rose, Chief Assistant District Attorney for the Family Violence and Sexual Assault Unit in

Philadelphia, maintains that mandatory arrest and no-drop policies in court may detract from the victim's best interests. Says Rose, "When a woman calls 911 she is asking for help; she is not asking to prosecute." These policies actually discourage a victim from reaching out for legal assistance in prosecuting or escaping from the violence (Ford 670-682).

The limits in the prosecution and litigation-based approaches outlined in this section are what drove me to explore the potential for alternative dispute resolution for dealing with victims and perpetrators of intimate partner violence.

Chapter 2

LIMITS OF PROSECUTORIAL OPTIONS FOR VICTIMS OF INTIMATE PARTNER VIOLENCE

2.1 Background

There are members of particular groups for whom turning to the prosecutorial system is particularly unappealing as compared to rest of population. Victims of upscale abuse, male victims, and members of ethnic and racial minorities are less likely to prosecute perpetrators because of perceived bias against them within the criminal justice system. Apart from general problems I perceived as an observer in Philadelphia Family Court regarding the chance to have a productive conversation with one's intimate partner, for particular groups the court system is especially off-putting because of the perceived bias. For these groups there is an especially strong argument for turning to alternative dispute resolution approaches.

2.2 Upscale Abuse

Female victims of intimate partner violence from upper socio-economic groups are an example of one such category of people for whom there is a need for combined counseling and mediation services. Paradoxically, because women from higher socio-economic groups are less likely to be victims of intimate partner violence (Catalano 1), they who end up as victims are less likely to ask for help in escaping the abuse. The

public assumes victims of intimate partner violence are members of lower socioeconomic classes (Weitzman 2). While poverty is often a contributing factor to abuse (Weitzman 5), this common idea of a battered woman as poor discourages female victims from other classes from seeking help (Weitzman 6). When therapists use the term “upscale abuse” to classify a woman who does not think of herself as a victim of intimate partner violence, clients respond more openly and are more likely to share their experiences (Weitzman 10).

The shape of the cycle of violence for victims of upscale abuse looks different from how psychologists traditionally think of the cycle. The honeymoon stage, in which the abuser tries to make up to the victim by buying her presents or apologizing profusely, is notably lacking from patterns of abuse in upscale marriages. The abuser keeps the victim in the marriage not by apologizing but by utilizing the already existent social pressures to limit the woman’s options. The upscale victim is less likely to have witnessed intimate partner violence as a child and therefore less likely to recognize the lead-up to explosions of violence. She is also less likely to seek help from what she considers resources oriented towards women without means. If she does seek help, she may be turned away or given lower priority than less affluent women because she will be seen as materially empowered and therefore not helpless. Toleration of upper class wife abusers by members of their social circles and by prosecutors who see the men as model citizens compounds the wife’s reluctance to seek justice through prosecution (Weitzman 11, 22-25).

In the courting stages of an upscale marriage, the men uniformly use a financial edge in convincing the women that they could be good providers. Victims of upscale abuse view themselves as linked with their husbands and have difficulty envisioning leaving the upper class lifestyle to which they have become accustomed. In addition, while women from poorer backgrounds often share their stories with friends and female relatives and freely blame their abusers for the crimes, the women from upscale backgrounds are more likely to blame themselves for the decline of their marriages and to tell no one else of the abuse. Such women often ignore suggestions for seeking counseling from family and friends and are less likely to ask about resources on their own (Weitzman 67, 98).

2.3 Race

While female victims of upscale abuse may hesitate to call the police or seek counseling, partly because of their conviction that their husbands would be able to wield enough money and power to exonerate themselves from the allegations of abuse, African American females from all socio-economic classes may hesitate to ask for help because they fear that the police will be *too* hard on the men and that involving the police will just take more control out of the women's lives (Koss et al. 380).

Continued fear of the police by African Americans deters African American females from calling the police because they worry that by calling they risk

subjecting an intimate partner to extra police brutality (Koss et al. 384). Members of minorities including Hispanic women and women who are immigrants from Southeast Asian countries have also expressed greater reservation about using the formal system of justice to solve intimate partner conflicts because they see the system as suffering from incurable institutional racism and prejudice against people from their country or culture of origin (Koss et al. 386, Ayyub 240).

2.4 Male Victims

Inherent in the mainstream conception of intimate partner violence is the notion that the victim is female and the perpetrator is male. Although 85-95% of victims of intimate partner violence are female, both men and women are perpetrators of intimate partner violence (American Institute on Domestic Violence). Male victims of intimate partner violence are less likely to prosecute their female perpetrators because of embarrassment over being a victim of what is seen as a male-perpetrated crime (Straus 10). In addition, male victims often feel that there is a lack of institutional resources for them, such as counseling and advocacy services. Despite mainstream perception that the male is always the abuser, the couple may have mutually contributed to the abuse, the female may have been the perpetrator, or, in the case of same-sex couples, the genders may not be relevant (Straus 7-10).

The extent to which males may be seen as the primary perpetrators of the violence partially depends on how one defines intimate partner violence. Some scholars propound a gender parity theory, insisting that women and men equally inflict violence. They claim that focusing on the physical part of intimate partner violence ignores the verbal assault by women on men. This argument says that the reason male victims of intimate partner violence have been slighted is because the police are only called in when the abuse involves physical injury; this picture ignores the majority of cases (Straus 12). In addition, proponents argue that many men are too embarrassed to report being abused by women, and no attempt is made to help them overcome this prejudice (Straus 19). When verbal abuse is included as criteria the proportion of female offenders goes up; rather than 5% (American Institute on Domestic Violence), the number is 40% (Straus 20).

Critics of the gender parity theory say that those who believe females and males equally perpetrate intimate violence ignore key factors, such as who started the physical violence, whether there had been physical violence before the reported incident, and how severe was the battering (Dasgupta 230). The critics call for better diagnostic tools than the commonly used Conflict Tactics Scale; they assert that merely ranking violence from zero to six ignores the nuances of the abusive situation (Dasgupta 235). In terms of the victim's maleness preventing the seeking of resources for help, more specialized counseling groups and greater institutional acceptance of the male victims would help to reduce the stigma (Dasgupta 238).

Chapter 3

THE DEBATE OVER RESTORATIVE-JUSTICE-BASED MEDIATION FOR INITMATE PARTNER VIOLENCE

3.1 Restorative Justice

The idea of bringing together victims and perpetrators of intimate partner violence draws critiques from those who say that the perpetrator cannot be “healed” and that the victim cannot regain autonomy through any means other than seeing the perpetrator imprisoned (Acorn). But others contend that alternative dispute resolution, based on the tenets of restorative justice, is appropriate for victims and perpetrators of intimate partner violence (Braithwaite).

Restorative justice is based on the theory of justice that emphasizes repairing the harm caused by the crime rather than punishing the perpetrator without healing the victim. In a mediation that aims at restorative justice, both the victim and the perpetrator of a crime work to come up with either a restitution agreement or a way to restore the victim to her or his level of personal safety and autonomy before the crime. Restorative justice mediation, sometimes known as alternative dispute resolution, may occur in tandem with or separately from formal legal resolutions. Restorative justice has roots in Greek society and pre-Christian cultures, including Asian countries with

Confucian cultural roots, Native American cultures, and indigenous cultures of Australia and New Zealand (Braithwaite 149).

One aim of restorative justice is to counter the atmosphere of prosecution by bringing together all parties to the crime and creating a dialogue (Braithwaite 150). As Western society embraced formal prosecution as the best means for dealing with crime, little attention was paid to the fact that few victims actually received restitution (Delgado 757). Instead, the current legal system focuses on punishing the perpetrator without focusing on implementing a policy to restore a victim to his or her pre-crime condition. Sometimes victims and perpetrators of crimes are given the option of meeting with court mediators instead of using prosecution (Braithwaite 154). Where crime victims engage in mediation to supplant prosecution, they report high levels of satisfaction, and this finding holds up for both victims who seek out the mediators and those who are referred by the courts (Ibid.). This finding supports the assertion that restorative justice mediation “restores” victims to their pre-crime levels of autonomy and safety more effectively than the traditional legal system (Braithwaite 155).

Restorative justice, in contrast to formal prosecution, brings an awareness of crime as an act against an individual, instead of as an act against a law or a state. The Dali Lama espouses a restorative philosophy, saying that if people are only driven by fear of punishment, they will only seek to avoid punishment and will have no sense of shame for actually committing the crime (Braithwaite 157). In non-Western cultures, restorative justice is often still the prevailing ethic: Native American healing circles

concentrate on the involved parties, rather than a set response to the crime itself, and the Moari of New Zealand use a concept that simultaneously means shame, healing, and embrace (Braithwaite 160). In South Africa after the end of apartheid, Peace and Reconciliation Councils used restorative justice and alternative dispute resolution techniques to allow victims of racially-motivated hatred to begin the healing process with the perpetrators of the violence.

Restorative justice advocates condemn the typical enforcement response of waiting to address law breaking until a serious crime is committed and then dealing with the problem by handing out harsh punishments (Braithwaite 162). Advocates of restorative justice caution not to push victims into the mediation process until they are ready and to be mindful of the dangers of community stigmatization of the perpetrator, in which the person is condemned and not the action (Braithwaite 165).

The rare scholars such as John Braithwaite and Richard Delgado who promote restorative justice approaches for crimes of intimate partner violence say that using alternative dispute resolution improves dynamics at the micro family level, and also that it reduces the stigma of being a victim of intimate partner violence. Because of the latter, alternative dispute resolution will positively affect the entire community, since all parties involved would feel empowered to reach out for community resources to stop the violence (Braithwaite 165). Braithwaite lists the following as benefits of choosing mediation over the formal criminal justice system for crimes of intimate partner violence: the chance for the perpetrator to admit to violent actions and for the

victim to tell her version of the story; the adoption of a less combative process that encourages victims and perpetrators to work together to pursue feasible end goals; and a personalized resolution process which, absent of the formal trappings of a courtroom, can be tailored specifically to the victim and offender (150-165).

A couple of other analyses specifically address the potential of mediation for victims of intimate partner violence (McGillis, Koss et al.). Section three of this chapter deals with these sources.

3.2 Critique of Restorative Justice

More typically, scholars say that alternative dispute resolution is not appropriate for crimes of intimate partner violence because the perpetrator will continue to use the same control and intimidation tactics he used to keep the victim in the abusive relationship to control the dynamics of the mediation session (Acorn, Daly, McGillis). While some of these scholars call intimate partner violence the exception to the merits of alternative dispute resolution (McGillis), others say that restorative-justice-based mediation is never appropriate for helping victims or perpetrators of crimes (Acorn). The majority of the critics of restorative justice are skeptical of mediation when it is used for criminal cases because they fear that the mediation will supplant the traditional criminal justice system. This thesis, however, supports restorative-justice-style mediation for civil cases, specifically, those where the formerly abused victim is now seeking divorce and/or child custody agreements.

Critics say that when there is intimate partner violence, there is no safe category of case for which mediation is appropriate (Acorn, Daly and Stubbs). This chapter will examine reasons why the critics oppose using restorative-justice-style mediation for any kind of case settlement where intimate partner violence is a factor.

Critics of restorative justice assert that pressuring a victim to have compassion for the perpetrator of a crime does not have anything to do with justice (Acorn Chapter 1). Common critiques of restorative justice include four main points: one should not force the victim to work on a broken relationship (Acorn Chapter 1), love and compassion should not be the basis for justice (Acorn Chapter 2), the perpetrator will not reform just because he is involved in mediation (Acorn Chapter 3), and idealistic approaches will not mend a pattern of violence (Acorn Chapter 4, 5, 6). In addition, critics fault the notion that a relationship need always move forward. Instead they say that living under the impression that a relationship has evolved in some way to a more peaceful form can easily set the victim up for re-victimization (Acorn Chapter 8). Such a critique mirrors Lenore Walker's description of the cycle of violence, in which a honeymoon stage after physical violence convinces the victim that the violence is over (Walker 10).

Restorative justice, as mentioned earlier, draws its roots in part from the South African Truth and Reconciliation Councils, which were set up to facilitate the start of good relations between the white and black communities after the abolition of apartheid. Critics like Annalise Acorn argue that the purpose of the South African

commissions was not the same as the purpose of restorative justice in one-on-one mediation and that the former were “founded on a legal category of amnesty completely distinct from any notion of forgiveness” (Acorn 11).

Critics dismiss the value of an ethos of forgiveness for intimate partner violence, asking, “Why would victims want to expend their time and energy on a bad and unwanted relationship that they would prefer to erase from their lives?” (Acorn 12). Unlike political figures Mahatma Gandhi and Martin Luther King Jr., who used concepts of restorative justice to obtain their political goals and make peace with those who opposed them, victims of interpersonal crime, say critics, do not have a similar goal that they can accomplish through the process. Some of these critics do allow that an exception to this critique might be the case of juvenile crime because the child is still cognitively capable to change the way he acts (Acorn 17).

Critics of restorative justice insist that love and justice are in different philosophical categories. Moreover, they assert that essentially all people are driven by self-interest, and that it is impossible to put a universal and selfless idea before one’s own well-being, and that restorative justice demands this of people (Acorn 29). Unless the perpetrator is completely willing to take responsibility for his or her actions, critics say restorative justice will pressure the victim to take on the burden of figuring out the dynamics of the broken relationship with the perpetrator.

In addition, the idealization of the creation of a relationship with mutual respect and understanding will lead to a sentimentalized justice driven by emotions,

which may put the perpetrator at an advantage during the resolution process (Acorn 80). While advocates of restorative justice promote compassion as the means to justice, in fact, “compassion is an unreliable guide inasmuch as it tends to spring from arbitrary and irrational forces” (Acorn 81). More likely than a compassionate and just solution to the crime will be the reality that the offender may derive a sense of power from hearing the victim talk about the crimes (Acorn 145). Moreover, the perpetrator will manage to subtly take control of the mediation setting to exert control over the victim, undermining whatever progress the victim thinks she has made.

According to critics, mediation puts the female victim at a disadvantage to the perpetrator (Daly and Stubbs 1). While some proponents of restorative justice argue that mediation is supported by a feminine ethic of care rather than a masculine ethic of justice and therefore will appeal to female victims, critics say proponents are deluded by sentiment and theory and do not take into account how a perpetrator of intimate partner violence can manipulate the mediation session (Daly and Stubbs 8). General problems with restorative justice include not looking out for a victim’s safety, blaming the victim or putting pressure on her to have compassion for her perpetrator before she is ready, erroneously trusting the community to enforce what is best for the victim, and putting a family with mixed loyalties at greater duress by forcing them to choose sides during the mediation process (Daly and Stubbs 16).

Although Kathleen Daly and Julie Stubbs list all these problems, they might be viewed as friendly critics because they offer strategies for overcoming them. For

instance, in order to eliminate the manipulation danger, a mediator, they say, must be well-versed in both intimate partner violence and mediation (Daly and Stubbs 16). They also note that there are resource centers such as RESTORE (Responsibility and Equity for Sexual Transgressions Offering a Restorative Experience) at the University of Arizona's College of Public Health which run programs in restorative justice mediation for victims of sexual crimes, but that the counselors there do not offer services for victims and perpetrators of intimate partner violence. The programs instead aim to provide the victim with the opportunity to meet with and ask questions of the stranger who attacked her (Daly and Stubbs 18).

The critics of scholars like Braithwaite and Delgado have a point with respect to the victims of intimate partner violence who do want to have the corrective measures of the criminal justice system applied against their perpetrator, but this thesis is not addressing this population. This thesis explores the benefits of mediation for people who would like to use it to divorce themselves from an abusive partner. These people are currently underserved.

3.3 Mediation and its Benefits

Differing opinions on the benefits and detriments of using restorative-justice-style mediation, especially when they stress abstract theories about restorative justice,

beg the question what is mediation and how does it work? Drawing from some of the elements in theories of restorative justice, mediators encourage parties to work together instead of against one another and try to direct both people towards specific outcome-based goals, often with monetary consequences. The mediation process is tailored to the specific goals of the two parties and aims to maximize both parties' satisfaction to the degree feasible (Koss 380).

Mediation was first used in labor relations, such as between unions and company management. The first family mediators were trained by the American Bar Association using such models (McGillis 11). From the late 1980s to the present day, mediation training has expanded to include interpersonal conflicts that go beyond the scope of business agreements.

One of the first changes mediators tried to adopt to become more adept at handling interpersonal disputes was to try co-mediation. In co-mediation, Daniel McGillis points out, it is possible to select mediators who represent the range of gender and ethnic diversity of the disputants. Another change was to add specialized training in the technical, legal, and financial features of divorce or custody mediation. Such training makes it more difficult for a mediation center to use volunteer mediators, as people with the requisite legal expertise are less willing to volunteer. Mediators working with participants who are embroiled in conflicts of intimate partner violence must have forty to sixty hours of specialized training. New mediators are

often apprenticed with more experienced professionals to ensure that they are ready to facilitate agreements (McGillis 12-15).

Dual mediation, the practice of two professionals working together to help clients through the mediation process, elicits differing opinions both from scholars and from practicing clinicians. Adriana Uken and John Sebold work and write as a team, always managing groups and conducting sessions together and find that having another person's reactions is helpful in working with clients (Lee et al. 42). Some mediators prefer to have greater control over the mediation process, while others like to have a partner who offers an extra set of eyes and ears with which to analyze the dynamics of the situation (Lee et al. 44).

Organizations such as the National Institute of Justice, the National Institute for Dispute Resolution, National Association for Mediation in Education, Society of Professionals in Dispute Resolution, and the National Association for Community Mediation contribute resources to new mediation centers (McGillis 8). National organizations may contribute research findings on the productivity of alternative dispute resolution tactics, organizational guidelines, and even lend their own personnel to new centers (McGillis 10).

Daniel McGillis and Mary Koss and her co-authors, specifically tout the benefits of mediation for victims and perpetrators of intimate partner violence. In alternative dispute resolution programs, perpetrators can feel free to share their own stories of victimization which may have led to their actions as abusers without making

the stories into excuses for their own crimes (Koss et al. 377). The fact of participating actively in one's own resolution process, says McGillis, "will result in more durable case settlements and greater satisfaction with the process by parties to the dispute" because the disputants themselves have "fashioned" the final agreement (McGillis 22). McGillis supports this conclusion with a reference to a 1992 Denver study of the satisfaction rate with court case processing of divorce or custody agreements as compared to satisfaction with mediation-based agreements, where couples were randomly assigned to either mediation centers or the court system. When researchers contacted the couples six to twelve months after their agreements were finalized, 36% of participants sent to the court system expressed satisfaction with the agreement, while 98% of couples sent to mediation expressed satisfaction with the agreement. Those who participated in mediation noted that they liked having their "story heard" and appreciated having the chance to explore other issues while formulating an official agreement (McGillis 54).

In the first and second chapters I discussed the limits of prosecutorial options in helping victims of intimate partner violence. My research on restorative justice in dealing with intimate partner violence has made clear that there is a role for mediation, but it risks failing if not accompanied with counseling sessions. I discovered in the process of my research that there is a mediation center that combines counseling and mediation for victims of intimate partner violence seeking divorce: the Mediation Center of Dutchess County in New York. The Mediation Center of Dutchess County

is unique because it is the only place to offer services for the population of victims and perpetrators of intimate partner violence who would otherwise be screened out from mediation centers and referred to resources specific to recovering victims and perpetrators or specific to getting a divorce through the formal justice system.

As this chapter has discussed, because the prosecutorial system and the formal divorce options within the justice system do not allow for combined counseling and safety resources for victims seeking a divorce, the victim is at a disadvantage, and therefore the divorce agreement will not always reflect her interests as much as it will those of her spouse. I have chosen to focus on victims of intimate partner violence who are seeking divorce agreements because of the lack of services for this population. Such services could empower the victim to participate in her divorce settlement process and afford the victim extra counseling resources that she would ordinarily find only at victims' services. The rest of my thesis explores how to put into place a center like the Mediation Center of Dutchess County, which offers a solution to the gap in services for the described population. In interviews with mediators and social work practitioners in my forth chapter, I explore issues related to the establishment of a mediation center with counseling services. In my fifth chapter, I discuss the mechanics of how to set up such a mediation center, and include a set of suggestions for how to institute human services collaborations in the style of the Mediation Center of Dutchess County in centers around the United States.

Chapter 4

INTERVIEW RESULTS

4.1 Introduction

This section will discuss the findings from four exploratory interviews conducted with experts in fields related to the study of how best to treat victims and perpetrators of intimate partner violence and how to help people develop divorce or child custody agreements. Several themes emerge during the course of these interviews: thoughts on the responsibilities of mediators, differences between litigation and mediation when working with victims and perpetrators of intimate partner violence, addressing intimate partner violence during alternative dispute resolution, and bringing in the community to support the couple as a way of enhancing the likelihood of successful mediation for cultural minorities.

Biographical Information of Interviewees:

Interviewee A, Esquire, is a divorce mediator who owns her own private practice in Brooklyn, New York. She chairs the Ethics Committee and the Domestic Violence Task Force for the Family and Divorce Mediation Council of Greater New York and

frequently presents topics on Ethics and Domestic Violence at conferences and seminars.

Interviewee B, Esquire, serves as a family court mediator in New York City and participates in a variety of other mediation areas, including workplace resolution, policy mediation, and domestic violence advocacy.

Interviewee C is the Junior Rabbi at Main Line Reform Temple in Wynnewood, PA. He also serves on the Central Conference of American Rabbis Committee on Rabbinic Spirituality, and has been the Scholar-in-Residence in synagogues around the country, teaching chanting, meditation, and Jewish spiritual thought. Interviewee C is not a professional mediator but has informal experience with mediation through counseling families in the congregation to help them resolve disputes.

Interviewee D, MSS, is a social worker in New Haven, Connecticut and works primarily with Children's and Family Services. She serves as an in-court mediator for families and couples who have been mandated to go receive mediation services and to prepare what they will litigate in court.

4.2 The Responsibilities of Mediators

When mediators think about having to account for the safety of their clients, they worry that they will be obligated to break the trust that they have worked to establish with their clients through the process of mediation. Whether or not

mediators should report intimate partner violence to the court system is an area that “is a little bit gray” (Interviewee A). Mediation starts with the creation of a contract between the couple and the mediator in which the mediator agrees that everything discussed in mediation will be confidential. While the contract allows the clients to feel safe divulging personal information, mediators sometimes feel inhibited by the contract if they detect signs of intimate partner violence and have to decide whether to break the confidentiality and notify legal authorities about incidents of violence in the family (Interviewee A and Interviewee B).

In order to avoid such a dilemma, mediators screen for intimate partner violence when they first meet the couple (Interviewee B, Interviewee A, Interviewee D); however, even after domestic violence detection training, mediators still sometimes feel unsure as to whether they can always detect abuse in clients (Interviewee A, Interviewee D). According to Interviewee B, even if measures are set up to screen for intimate partner violence and extra support resources are offered to victims, some social service professionals may feel unsure about the ability of mediators to delineate between those who can and cannot participate in mediation:

Some people are just violent and don't know how to control themselves. If some women [who I represented] stood up to their husbands or boyfriends there was a danger of them getting killed. If a woman left her husband, he would seek her out. There are dangerous situations where doing anything might provoke the person to become more violent and that would be the fear [of offering services to people who had histories of intimate partner violence]. We talk about domestic violence as being much broader than that now. But when you're talking about real physical violence, you're taking a big risk if you're mediating (Interviewee B).

Is there a way to identify people who are not so violent that there is not a danger to mediate? Interviewee B suggests that more hope may lie in working with people whose history of abuse took the form of emotional, financial, and social control and did not go to the extent of physical violence, unless the physical violence was a one-time occurrence.

Of the three mediators interviewed, Interviewee B was the most negative on the potential benefits of mediation for a divorce where there had been actual physical violence between the couple. The other two saw more potential but did point to the need for special precautions.

Interviewee A, in contrast to Interviewee B, affirmed that the risk described by Interviewee B can be countered successfully. She claimed that if a safety plan and a controlled space are in place for the mediation between former victim and offender and screening is done for ongoing violence, mediation is still possible (Interviewee A).

Interviewee A pointed to both self-screening by potential clients and to screening by trained mediators as examples of how to mitigate the effects of the history of violence intruding on the mediation sessions. Part of screening for intimate partner violence is advertising on the mediation website the qualifications for participating in mediation, such that people who know they are being controlled will usually screen themselves out (Interviewee A). Moreover, although mediators “used to think that all violence was to cement patterns of control,” they now distinguish between situational violence and cycles of violence to determine who is suitable for

mediation (the former) (Interviewee A). Interviewee A identified the protocol at the Mediation Center in Dutchess County, New York as an example of a system which successfully distinguishes the extent to which the violence will inhibit the process of mediation.

Interviewee D warned that when there is still a threat of danger or when someone has an especially violent temper the mediation process will not be productive. Interviewee D is more positive about the chances for successful mediation with victims and perpetrators of intimate partner violence than were ten of the mediators attending the conference of the Family and Divorce Mediation Council of Greater New York. These ten worried that even though the mediators would not actually be directly responsible for the victims' advocacy and safety assurance process, they would unwittingly play into the perpetrator's cycle of control and abuse by helping to shape an agreement which was not in the interest of the victim, or letting signs of abuse go unnoticed during mediation.

Interviewee D offered a litany of advice on how mediators can eliminate inappropriate mediation clients: (1) while extra training for mediators would alleviate some concerns about mediating between a former victim and perpetrator of intimate partner violence and would be useful in detecting the signs of intimate partner violence, a physical and mental assessment is best done by experience. (2) When talking to clients who might be experiencing or have experienced violence in their home, the mediator should note how the clients are talking and holding themselves,

their complete psychological history, and what language they are using. (3) What a mediator needs most in order to work effectively with people who have a history of intimate partner violence is “the ability to focus and trust their own intuition,” and when the mediator senses someone is taking advantage of the other by employing methods of power and control, she is usually right. (4) This skill comes from training with practicing mediators and social workers and from one’s own experiences in the field.

Interviewee B said that although a mediator should not go into mediation with ideas about what the clients hope to get out of the process, first impressions may cause a mediator to pick up on signs of abuse and therefore view the perpetrator’s motives for participating in mediation with the suspicion that he will try to use the sessions to further terrorize the victim (Interviewee B). Interviewee B illustrated this point by describing a case from fall 2008 in which she was assisting with a divorce case in which the female client accepted everything the male client asked for without hesitation. Interviewee B was surprised at the agreement because when the female client had entered the waiting area, she had ignored her husband without saying hello to him and seemed fearful to look Interviewee B in the eye. At the time of the interview, Interviewee B still did not know whether to bring up the possibility of intimate partner violence, because although she had an intuition that something was amiss, she did not know if she was seeing patterns where there were in fact none. Interviewee B used the case to emphasize the difficulties of relying on the mediator to

determine whether reticence on the part of the victim is a sign of abuse, or just of the personal difficulties of ending a marriage. Interviewee B, like those at the conference of the Council of New York Family and Divorce Mediators, stressed that screening to determine if the abuse is actually ongoing would be essential to mediating with a couple who had a history of intimate partner violence, lest the abuse damage the mediation process and put the victim at a disadvantage in expressing what she wants to get out of the agreement.

According to Interviewee A, instances where mediators feel challenged by residual effects of violence include those mediations in which the violence is part of the language of the relationship. Interviewee A offered the example of a couple who had both experienced violence in their first marriages and had both come from households where there had been violence. The couple had been separated for a year but had recently met and drawn up an outline of what they wanted to discuss in mediation. As Interviewee A observed, despite the fact that they had composed an outline, there were still numerous challenges to overcome:

They had very few dispute resolution skills. They were the ‘typical’ abused couple, she was shrill and he was charming. But there was one session where he was just getting so mad at me and he just kept looking at me with this seething in his eyes and I, who have never been in a relationship where there was violence, I felt terrified and was ready to jump into the dynamic of the relationship (Interviewee A).

Interviewee A noted that although the couple seemed ready at first to compromise, the fact that the man simply did not have the words to use when he was angry inhibited the

process of the mediation, and Interviewee A had to meet with the couple for many months before they came up with an acceptable agreement about their divorce.

It is apparent from the interviews that relying on the mediator to determine the existence of ongoing abuse will be detrimental to the alternative dispute resolution process. Well-established screening methods in the mediation center and good relations between mediators and counselors working with victims will be needed to ensure that no perpetrator of abuse could use the mediation system to gain further control over the victim. Proper screening methods will need to be put in place, before a mediator can then focus full attention on helping to produce a fair agreement and on making sure that both voices are being heard in the dispute resolution process.

4.3 Litigation versus Mediation

While the mediators agreed that coerced mediation is less effective than voluntary mediation, in regards to pre-trial mediation involving divorce or child custody Interviewee A notes that:

What can work is when people have to attend one mediation session. Some people just love the litigation process or have narcissist or borderline personality disorder; they aren't going to get anything out of mediation. But in ten out of the twelve cases I have seen in the litigation process, three fourths of them were able to resolve some issues just by sitting down with a neutral person and being encouraged to talk (Interviewee A).

Interviewee A says that in divorce cases, the first action many litigators take is to advise their clients to stop talking to the other spouse. Because of this, Interviewee A notes, the court system's adversary nature often works to the detriment of the clients' abilities to communicate and reach an amicable agreement. A better option, says Interviewee A, is alternative dispute resolution in the style of the Mediation Center of Dutchess County. There, she says, mediators can offer the clients several options regarding how to best work on the resolution. Interviewee A says that even in cases where one might think that the couple will not be able to resolve disputes cordially, solutions can be obtained. In the Mediation Center of Dutchess County, Interviewee A explained, mediators offer a sort of shuttle diplomacy where, if need be, the parties can separate into different rooms to cool off and speak with different mediators until they are ready to mediate in the same room again.

Interviewee B echoed Interviewee A's observation that sometimes a couple turns to mediation when litigation, marriage counseling, or another avenue of problem solving has not worked to resolve the disputes. The mediator then has the challenge of discovering not only what the challenges are in maintaining a safe and neutral space, but how the challenges have been adequately or inadequately addressed in the past. Interviewee B says couples may turn to mediation because they feel frustrated with the court system and have been turned down from even obtaining protections from abuse from one another, having not made any progress in starting the separation process.

Interviewee B says that while a mediator may send a couple with an apparent history of intimate partner violence to a marriage counselor, this referral may only exacerbate the need for mediation. Says Interviewee B, “A lot of mediators refer people to marriage counselors if the couple is not ready to get a divorce, but I always wonder, why is that a marriage counselor’s job, why can’t the couple decide what they want through mediation?” In addition, Interviewee B says that there can be a greater danger of judgmental treatment in marriage counseling than in mediation because the counselor is trying to fix a problem whereas a mediator is a neutral party who is helping the couple work towards a viable set of solutions. Interviewee A noted that about a quarter of her clients in divorce mediation have been to marriage counseling, but she says that more common is the case where one of the clients says that three years ago they should have gone to counseling but they did not, or that the couple went one or two times but did not have a positive experience.

Sometimes a couple wants to try mediation, says Interviewee A, just because they have had a negative experience in litigation. A couple who had spent twenty thousand dollars in divorce litigation and just wanted to try something else contacted Interviewee A in fall 2008. Interviewee D emphasized that litigation is much less cost effective than mediation because in litigation the couple may be working with two lawyers instead of just one mediator. In addition, she says the entire court process is “more draining and embarrassing.” Interviewee D observes “Court cases are often open and people feel humiliated at having been seen entering the

courthouse from the street.” Mediators hope that creating an alternative dispute resolution process that imbues the participants with dignity and support will serve as a defense against recidivism for future violence as well as provide for lasting and fair divorce and child custody agreements (Interviewee B, Interviewee A, Interviewee D).

4.4 Addressing the History of Intimate Partner Violence in Mediation

Interviewee A advises that when working with a couple who has a history of intimate partner violence in their relationship, a mediator should stay especially aware of control tactics one client may use on the other in order to manipulate the direction of the resolution. When one party is clearly trying to control the other in a mediation session, Interviewee A suggests, one tactic is to make the control issues transparent by verbally highlighting how the tactics are affecting progress. As a way to neutralize the effect of one person taking more attention in the mediation session, Interviewee A imagines text bubbles coming out of both people’s mouths and says that “There must be two bubbles and they must both be the same size.” When Interviewee A finds herself concentrating on the louder and more attention-demanding person, she makes sure to increase the “size of the other person’s bubble” in order to maintain her neutrality and give each client equal attention.

Interviewee B says that a mediator could also try to give each party his or her voice by understanding what each person’s “triggers” are and then figuring out with the clients how to stay away from those topics that will only incite violence or

frustration. If the triggers are discussions of the violence itself, she continues, then “the case is troubled.” Interviewee B suggests that mediation for couples who have had intimate partner violence would work best when both parties have agreed that the perpetrator did something wrong by committing violence. Otherwise, when the two people are discussing future arrangements and the topic of violence comes up, the offender might say, as Interviewee B observes, “I didn’t do any of those things you say I did; why do we even need an agreement that says that I will not be violent?” As a solution for when victim and offender do not even verbally agree on what brought them to mediation, Interviewee B suggests that discussions stay focused on the future. She says that language focused on “if this issue arises, this is what we will do” avoids the whole issue of blame and starts to allow the victim and offender to speak objectively about the future of their relationship. Interviewee B’s argument for solution-focused language echoes the message in *Solution-Focused Treatment of Domestic Violence Offenders* by Lee et al. While Interviewee B says that involving members of the participants’ families may be beneficial to “making the offender feel less anonymous,” she also says that separating the participants or “caucusing separately” can be detrimental to establishing the participants’ trust.

Interviewee A says that separating the clients or treating them differently threatens the notion that the mediator will retain her neutrality. Interviewee A notes:

“The hardest part [of mediation] is maintaining neutrality. There is something very appealing about judgment; it feels like truth to say let’s just put that person in a box and label them. But in truth it is always

more complicated. I'm never going to know the full story; I'm only going to see a little piece of it."

One way that mediators can find out more about the influential dynamics of the relationship is to make sure to follow up with the participants after the mediation has formally ended (Interviewee A, Interviewee D). Interviewee A has eighty six cases on her current docket because she follows up on clients and because some cases take as long as five years (Interviewee A). Interviewee D always follows up on clients after mediation. If she makes a referral to Domestic Violence Services, she follows up with the advocates at the agency. If the clients are still embroiled in the court process, Interviewee D follows up until they have reached a resolution and are done with the suit. Interviewee D observes that "you can't just let people go; at the very least the person in charge of the case should follow up with a phone call six months after the last mediation session and then after a year with a letter." At Casey Family Services, her former employer, Interviewee D said the mediators gave families a form and questions to answer about the effectiveness of the mediation and how the family was doing and then sent a letter to remind the family to fill it out six months later. The project received a positive response from clients who liked that someone cared to know their opinion of the experience.

4.5 Dual Mediation

In any mediation settings, clients hope to find mediators who will stay neutral and help the couple to reach an agreement without incurring the cost and combative

process of prosecution. Sometimes, to ensure that the mediation remains neutral, mediators will co-mediate, a practice called dual mediation. Interviewee A warns that in mediating with a couple who has a history of intimate partner violence, one danger of dual mediation could be that one mediator might take the side of one client and the other mediator the side of the other client; however, the mediators could also keep each other informed if one senses that the other is exhibiting a bias during the mediation process, such as siding with one member of a particular sex or always siding with the victim. Interviewee A owns her own private mediation practice and employs two associate mediators; she sometimes co-mediate with her two employees, especially when she is training them or reviewing their progress. Interviewee A notes that dual mediation can benefit the overall mediation process:

“You need to have the same philosophy of mediation. Another set of eyes and ears in the room to share your perceptions with can be a plus. It is also good to have a man in the room [when you are a woman] because it corrects the gender imbalance. Guys direct their questions towards Michael [one of Interviewee A’s co-workers] because they think he’ll get him.”

Interviewee B, too, has had positive experiences working with a co-mediator. When there are two mediators, she reports, the clients do not spend the first session figuring out if one person is getting more of an advantage than the other, because there is an assumption that with two mediators, there will not be a favored client.

While such positive reports offer support for the prospect of dual mediation in centers such as the Mediation Center of Dutchess County, Interviewee A warns that the danger of disagreeing with a co-mediator may cause tension when each mediator

has a different idea of how the mediation should proceed. She notes that sometimes during dual mediation her connection with the people in the room is not as intense as it is when she is the only mediator and that she sees a lower rate of returning clients in dual mediation, a pattern that Interviewee A attributes to the fact that her attention is split between the clients and the other mediator and is not focused entirely on her clients.

Interviewee D has participated in dual mediation and has had mostly negative experiences. Sometimes Interviewee D finds the other social workers are too quiet and reserved, while other times a partner may overly dominate a session. Interviewee D explains that it is hard to find the right balance when working with a co-mediator because, as she puts it, “While you do not want the other social worker to be overpowering, you want to be able to develop a pattern and feed off of one another and sense what the other is thinking; otherwise you both can go off in different directions with the clients and end up hurting the clients’ chances for success.” She adds that if they do not communicate properly, then each mediator may have a different idea about how to tailor the process to best meet the specific needs of the couple.

4.6 Bringing in the Community to Support the Couple

One benefit to using a mediation center as opposed to the traditional legal process for divorce or custody agreements is that there is more flexibility regarding how the couple wants to conceive of the problem-solving process. Some mediation

centers encourage incorporation of family members or close friends into alternative dispute resolution as a way to make the couple feel that there are extra supportive people who will stay with them even after the mediation officially ends. Mediators might bring in the couple's child if the child is over twelve years old and an issue that will directly affect the child is up for debate in the custody agreement (Interviewee B, Interviewee A, Interviewee D).

Interviewee D suggests that bringing in religious clergy for deeply observant religious couples may also help to tailor the mediation process to fit the couple's needs. By contrast, Interviewee C warned that if an actual rabbi was included as a co-mediator, the male perpetrator would acquire an edge over the female victim because Jewish tradition favors maintaining a two parent household and gives the husband extra privileges. (Interviewee C further observed that abused Orthodox Jewish women are under societal, familial, and communal pressure to solve the problem themselves and therefore are even less likely than women who are not religiously observant to go to the police or to seek formal justice or to enter divorce mediation.)

Interviewee C says that if they do admit to having a history of intimate partner violence, the couple would be more likely to go directly to the rabbi in their community, as the Orthodox Rabbi is seen as having the foresight and good judgment to be able to impart wisdom in cases of conflict. Instead of involving a rabbi or other clergy in the process of mediation, Interviewee C suggested, a mediation center could have a few religious contacts on standby to advise a mediator in the case of a religious

couple who seem to be guided by religious doctrines unfamiliar to the mediator herself. Interviewee C said that he would eagerly participate in such a program and would be glad to be on call should such a mediator or social worker need his assistance. Regarding the issue of religious divorce and the issues it could present for the couple, he reported there is a precedent in Jewish tradition of following the law of the land, since Jews for millennia have lived under different national laws. A legal divorce, therefore, would be seen as necessary even for the most traditional of religious Jewish couples.

Interviewee C said he has not had a lot of experience with members of his congregation asking for assistance regarding issues surrounding intimate partner violence, and he thinks that because he works at a Reform Jewish congregation the people tend not to feel inhibited from going right to mediators or lawyers if such issues arise. Interviewee C noted that he has talked with some families who have experienced violence and has referred them to appropriate groups. Interviewee C said that, whereas in rabbinical school he did not receive any specific training regarding intimate partner violence, the topic arises in Talmudic debate quite often. As examples of resources to offer to the victim, mediator, or counselor, Interviewee C suggested women-friendly texts on Torah as well as groups like the Rachel Coalition, which stress the *Kol Isha*, the voice of the woman, in discussing issues of intimate partner violence.

While clergy on call and advocates for both victim and perpetrator may enhance the mediation process, an advocate or counselor for the victim is the essential

part of the process (Interviewee D). Both Interviewee D and Interviewee B insisted that the perpetrator should not get extra resources unless he is able to admit that he has done something wrong, because they worry that the offender would take advantage of the extra advocate as a tool to further control the victim in the mediation process.

Interviewee A pointed out that mediators working with a couple from an ethnic or religious minority can also use internet resources to do their own research, as well as calling on professionals who are members of the specific community. Interviewee A notes that because she gives as much control to the couple as possible, she can adjust to their particular style if there are cultural differences. Sometimes, the cultural differences might put up a wall not just between disagreement and problem solving but between the clients and the mediator. “I had a case recently with a Korean couple,” Interviewee A said, “and I felt there were cultural differences and there were things about their situation they were not telling me – and then they would start talking to each other in Korean, so it was very clear there were side comments they did not want me to hear.” Interviewee A says that in this sort of a case or when a couple is especially quiet, she provides a topic, perhaps saying “let’s talk about what you are going to do with the children,” and then she would wait and let them try to fill in details to the plan. Through this approach Interviewee A hopes to let the clients form their own problem-solving skills under her direction, instead of just letting her dictate the details of the arrangement.

Interviewee D argued that cultural sensitivity can be crucial to understanding the nuances of the couple's thinking or even the root of the problem. Interviewee D gave the example of a case she handled in which the state wanted to pull children out of a home because there was suspected child abuse, specifically, reports of coin marks imprinted on the children's skin. Upon taking the time to talk with the family, Interviewee D learned that pressing coins on the skin to leave marks was a tradition from the family's country of origin. If she had not taken the time to learn about the behavior, then the children and parents would have had to go through the trauma of having the children removed from the home. Instead, Interviewee D explained to the parents that the behavior was not acceptable in the United States and the parents ended the practice. Education or reeducation is also necessary in cases of intimate partner violence in immigrant families who come from cultures where hitting one's wife is not considered a crime (Interviewee D). All interviewees agreed that having a mediator who has the resources necessary for understanding culturally specific barriers to overcoming intimate partner violence would make for a more productive alternative dispute resolution process.

* * *

This chapter presented the views of four practitioners on the obstacles that could arise during the process of alternative dispute resolution for divorcing couples and with recovering victims and perpetrators of intimate partner violence. Screening

out clients who are still embroiled in intimate partner violence, communicating effectively with the counselors in the mediation center, and maintaining neutrality were all lessons that could be used in merging counseling into mediation centers across the country. The following chapter will apply lessons from the literature and interviews to ways to overcome potential obstacles in merging support services into the mediation centers in the style of the Mediation Center of Dutchess County, which is the only mediation center in the country to offer these integrated services. By addressing the obstacles before collaboration begins, program leaders would be better prepared for the service integration process.

Chapter 5

INTEGRATING VICTIMS' SERVICES INTO MEDIATION CENTERS: REPLICATION OF THE PROTOCOL OF THE MEDIATION CENTER OF DUTCHESS COUNTY, NEW YORK

5.1 Introduction

This chapter will address possible administrative and bureaucratic obstacles to expanding the protocol of the Mediation Center of Dutchess County to other mediation centers around the United States. The first section will include information on how the mediation centers would run and how mediators and counselors would prepare clients for alternative dispute resolution. The second section will discuss funding the mediation centers. The third section will cite difficulties of human services integration. The fourth section will note hurdles in properly evaluating a new kind of human services operation.

5.2 How Will They Run?

The proposed replication of the protocol of the Mediation Center of Dutchess County will continue to follow the steps of the original protocol. The five phases of the protocol for dealing with couples who are seeking a divorce but have a

history of intimate partner violence and want help arranging the divorce settlement and/or child custody issues are as follows:

1. *Initial Contact* to provide basic information.
2. *Extensive Intake* to identify the possibility of domestic violence.
3. *Safety Assessment* to provide in-depth counseling to the victim and help her understand the residual effects of intimate partner violence on mediation.
4. *Safety Planning* with the domestic violence consultant to develop a plan with the mediator to learn of triggers and how to make the mediation process more comfortable for the victim.
5. *Mediation Session* complete with implemented protocol (DePorto and Miller “Honoring”).

Stages one through four, in which the clients are screened to make sure the violence is not still ongoing and the victim receives counseling and develops a safety plan for the mediation, address the concerns raised by the interviewed practitioners who wanted to make sure that the perpetrator would not use the mediation sessions as a tool to further control his victim. This protocol is unique in that it combines counseling, advocacy, and mediation to address the needs of the population of recovering victims and perpetrators of intimate partner violence who are seeking divorce and/or child custody agreements. The goal of the mediation is to use a neutral third party (the mediator) to help the participants to shape child custody and/or divorce agreement which will result in both parties’ interests being met to the greatest possible extent. The protocol is a system that, if replicated in mediation centers around the country, would be able to meet the needs of the described population in a way that is currently unavailable. This chapter now will discuss specific ways of replicating the protocol.

After initial contact and during the intake phase, counselors would determine if clients have a history of intimate partner violence and if the violence is still ongoing. Mediation centers frequently use assessment tools to diagnose hidden variables in clients' cases, such as a history of family violence, psychological disorders, and dynamics between the people who are seeking to resolve disputes (Braithwaite 150). The best diagnostic appraisal tools include the Violence Risk Appraisal Guide, RRASOR, and Statistic-99 (National Research Council). Medical doctors are often the professionals most likely to screen clients for intimate partner violence, although in some states mandatory reporting laws that require a doctor to report signs of intimate partner violence to the police discourage patients from sharing the abuse (Zink 333).

In standardizing how to screen for intimate partner violence, mediation center counselors could determine which medical questionnaires regarding intimate partner violence are used most widely and use them in their own screening processes. Using a reliable diagnostic tool to determine the extent to which a couple may have experienced intimate partner violence is essential to determining whether the couple will benefit from receiving extra support resources as they continue with alternative dispute resolution. If the violence is actually still ongoing, and therefore requires more attention than secondary support services in the mediation process can offer, it is likely that the couple will not benefit from mediation.

Once intake counselors and the mediation center staff determine that a couple qualifies for alternative dispute resolution, the mediation process would begin.

When designing a community mediation center that integrates counseling with mediation services, facilitators will have to decide which kinds of dispute resolution services the center will offer. The most commonly used approaches of dispute resolution that are alternatives to prosecution are conciliation, mediation, arbitration, and facilitation.

Conciliation often involves a type of shuttle diplomacy, where participants do not meet face to face. Mediator Interviewee B noted that while she has participated in this style of resolution for couples who insisted on this approach, she finds it mostly ineffective (Interviewee B). In arbitration, a third party imposes a settlement that is enforceable in civil courts, much like the outcome in an order of protection from abuse.

Mediation, the category that this thesis promotes as the best fit for divorcing couples and those seeking custody agreements, as noted above involves the face-to-face meeting of participants with a third party who cannot impose a settlement. The Academy of Family Mediators, the leading national mediation organization, has developed competency standards and ethical guidelines for mediators; however, divorce and family mediators, including Interviewee B and Interviewee A, note the lack of a coherent set of national standards for the specific problems that may arise during mediation, such as working with couples who have a history of intimate partner violence. In merging counseling services for recovering victims of intimate partner violence into a mediation center, one of the major challenges for mediators would be

to adhere to multiple sets of guidelines and establish a system of protocols for all mediators working at the particular center.

In addition to mediation consumer guides, facilitators working on human services mergers could consult resources such as the “SPIDR Commission Recommendations Regarding Standards of Competence and Qualifications,” “Model Standards of Conduct for Mediators,” and The National Institute of Justice’s report “Community Mediation Programs: Development and Challenges,” which offer carefully crafted and broad-ranging recommendations for alternative dispute resolution centers (See Appendices A, B, C).

Mandatory intake and preliminary counseling for each client would determine how counseling in preparation for the mediation could best help each client. A prerequisite for continuing with alternative dispute resolution when the clients demonstrate a history of intimate partner violence must be the acknowledgment by both parties of the violence of its wrongfulness; otherwise, counseling in preparation will not serve to create an equal negotiating space at the mediation table (Interviewee D). The Mediation Center of Dutchess County does not require a statement of culpability from the perpetrator; the counselors just require that the victim feels safe to participate in mediation and that the violence has ended (DePorto and Miller “Honoring”).

5.3 Counseling Recovering Victims

Victims' advocates working for a mediation center should agree upon the extent to which they will offer counseling and intrude upon the mediation process itself should they detect signs of control and abuse during the process. Some female victims of intimate partner violence going through divorce or child custody cases may feel that because they have physically extracted themselves from the violence that they are no longer in danger. Counselors should be aware of this and give their clients information that empowers the client to decide what mechanisms she needs in place during the mediation process in order to feel safe (Walker Chapter 12). If it is enough for the client to have the mediator know a secret signal that will signify that the client feels uncomfortable and needs to pause the mediation, then the counselor's role may be mostly to prepare the safety plan. If a client, during the course of pre-mediation counseling, realizes for the first time the extent to which the violence affected or continues to affect her, the counselor may need to spend more time helping the woman to figure out if she can go through with the mediation or if she needs continued therapy before she feels strong enough to participate in alternative dispute resolution.

During a counseling session with a female victim before the start of counseling (or mediation) with the perpetrator, counselors note it is important to engage the client without creating the atmosphere of a therapist's office (Walker Chapter 12). One way for counselors to make their clients feel comfortable enough to share their experiences

is to refrain from editorializing on the abusive situation or diagnosing contributing factors that might have led to the abuse (Walker Chapter 12). One might also describe the cycle of violence in a non-personalized way, using hypothetical characters in order to impart to the client that she is not alone in her story of victimization (DePorto and Miller 2005). As women often wait several years before reaching out to ask for help to end an abusive relationship, counselors may have to allow the client time within counseling to reflect on the dynamics of a relationship which the client has spent years normalizing and rationalizing in order to survive the abuse (Walker Chapter 12).

5.4 Who Contributes and Who Pays?

In order to offer ongoing services tailored to the needs of clients, mediation centers need to have a stable finance plan. When advertising services and accepting clients into the mediation program, program directors need to be sure that the program will be able to carry through on the offered resources, lest it leave the clients without the intended preparation and support systems. Common resources for program budgets come from state and local governments, charitable foundations, fees for service, and fund raising projects. The National Association for Community Mediation receives funding from Americorps. When fees for service are collected, mediation centers may offer local citizens the opportunity to become members of their local community mediation center and pay a nominal membership fee. Membership in the mediation center can serve as insurance against future conflicts, as members could

protect themselves from becoming embroiled in future legal fees. In order to increase membership, a mediation center could provide community education services in conflict resolution strategies for children, families, and in the workplace. Increasing its visibility in the community would promote community efficacy and continually advertise the mediation center's services (McGillis 70-74).

Another source of advertisement and program operations is funding from the government. Bills such as the federal Victim's Compensation Act of 1984 and then the 1994 Violence Against Women Act, co-sponsored by current Vice President Joe Biden, earmark funds for intimate partner violence prevention which could support programs such as integrated mediation and counseling centers (Walker Chapter 13). When facilitators consider merging extra support professionals such as counselors and victims' advocates into the mediation center, current and future budget concerns must be accounted for so that participants will be able to afford personalized and effective services. One idea would be to model the mediation services on the sliding fee services used by private mediators like Interviewee A or on the medical care system, with high fees for service for those who can pay and to use the federal money and volunteers for those who cannot.

5.5 Human Services Integration

Well-meaning initiatives in mediation centers will succeed in reducing the stigma of intimate partner violence for the victims, reaching out to the underserved population of former victims and perpetrators seeking divorce and child custody agreements, and tailoring the process to the clients, only to the degree that the inter-agency collaboration plan is carefully designed and driven by dedicated leadership.

Scholars who work on the topic of merging together previously separate social service functions note that in order for interagency collaboration to be successful, there must be strong executive level decision makers as well as good consultants whose business is agency synthesis (Agranoff, Vinton). In addition to the macro-level planning of the agency executives, participation of field-level actors such as agency heads, service workers, clients, and advocates provide real world input in order to make sure that the conceived operations are realistic and user-friendly (Agranoff, Backer).

In the process of integrating counseling for victims into the Mediation Center of Dutchess County, Dee DePorto from Battered Women's Services and Jody Miller from the Mediation Center of Dutchess County decided to create a new plan, the protocol, specific to clients with a history of intimate partner violence. DePorto would be in charge of the team of counselors who would be available certain days of the week to meet with recovering victims and develop safety plans for mediation, and

Miller and her mediators would adjust the general mediation schedules to accommodate these new resources. DePorto and Miller each consulted with their staff members at the beginning of the service integration process to make sure that the mediators understood the protocol and that the counselors from Battered Women's Services who would be assisting at the center understood how they would fit into the mediation process (DePorto and Miller "The Protocol").

The institutional collaboration scholars warn that once workers are educated about the new services and organizations agree to collaboration, a smooth transition is important to the ultimate success of the operational merger. They list three categories of difficulties that emerge during the process of interagency collaboration: those concerning momentum processes, in which the initial enthusiasm for the project must be maintained; those involving legitimacy of leadership, in which either one agency takes on dominant responsibility for the project or representatives from each agency successfully work together; and difficulties of limiting commotion processes, in which the leadership must balance between maintaining energy and infusing so much attention to the project that ongoing services cease and both agencies suffer. Scholars also warn that before starting the process of interagency collaboration, members of agencies should ask whether the collaboration is specifically addressing a given gap in services or is just replicating already existing resources and whether the proposed collaboration will create resources appropriate for the community the agencies wish to serve (Backer, Vinton).

DePorto and Miller overcame the problem of maintaining enthusiasm for the project because of workers' awareness that the creation of the protocol served both the interests of Battered Women's Services and those of the Mediation Center. Victims' advocates at Battered Women's Services were excited for the chance to empower victims to escape the cycle of violence through help in getting through the divorce process. The mediators of Dutchess County were receptive to the new addition of counseling because it meant that they could help even more people use mediation to create fair agreements and that they no longer would have to disqualify people because they had a history of intimate partner violence from taking advantage of mediation services (DePorto and Miller "The Protocol").

In regards to the challenge of legitimacy of leadership, DePorto and Miller, as leaders of their respective agencies, had both the background in the services the protocol would offer and the respect from their agency workers to persist in creating the protocol. DePorto's experience in victims' advocacy, her scholarship in the field of domestic violence research, and her clinical practice all afforded her expertise in contributing to the project. Similarly, Miller's experience as a mediator and leader of the agency gave her a background in how to implement a new brand of resources and to figure out how the implementation would actually work (DePorto and Miller "The Protocol").

DePorto and Miller stress that the protocol fills a gap in services for recovering victims and perpetrators of intimate partner violence who are seeking divorce or child

custody agreements that is currently unfilled in any other mediation center (DePorto and Miller “Honoring”).

When designing the protocol of the Mediation Center of Dutchess County, DePorto and Miller were able to overcome the potential difficulty of not paying enough attention to regular services while starting the protocol by not taking on new clients from the local court system who had been referred to mediation for a period of six weeks while the agency leaders worked out how to integrate resources with victims’ advocates from Battered Women’s Services. The temporary pause in the overall caseload ensured that both agencies could focus full attention on successfully starting their new project without detracting attention from ongoing cases (DePorto and Miller “The Protocol”).

Another common warning in the scholarship is that during the process of interagency collaboration, workers at the respective organizations may feel underappreciated for taking on extra responsibilities during the transition. During the collaboration design and implementation, problems that typically emerge include lack of focus, inability of leaders to compromise, lack of reinforcement of affirming behavior, general lack of enthusiasm, and allusions to past problems. Over time, these hurdles can take the form of high turnover in member representation, absenteeism among representatives from organizations, failure to meet expected outcomes, and withholding of information from other workers involved in the collaboration (Backer, McGillis, Vinton).

The Dutchess County protocol allows DePorto and Miller to avoid the tensions of collaboration in part because the contributing agencies are relatively small in size compared with larger mergers that occur between other public and private institutions. Because of the small number of workers with changes in responsibilities as a result of the protocol (only three permanent counselors from Battered Women's Services travel to the Mediation Center regularly and the mediators at the center simply adopt the safety plans) DePorto and Miller say that they do not find difficulties in managing workers or following up with them to make sure that mediators are still comfortable with the protocol (DePorto and Miller "The Protocol").

The scholarship suggests that once collaboration is successfully under way, leaders at the contributing organizations might need to promote the new services to the community of potential clients. Public awareness of mediation continues to be relatively low because of a decline in civic participation and engagement in local communities, lack of media attention, limit of exposure to citizens who have not already used the services, and lack of public information campaigns at national, state, or local levels. Possible ways to increase public awareness about new community collaboration might include community fliers, speakers at local town meetings, educational programs in schools or at religious institutions, postings at health clinics and doctor's offices, and notices in local newspapers (Backer, McGillis).

DePorto and Miller say that they do not publicize the services offered by the protocol because word of mouth communication is enough to draw in interested

clients from all over the county. Because DePorto and Miller want to keep the Mediation Center and the services from the protocol to a small and manageable size so every pair of clients can receive enough personalized attention, they do not plan to add any promotion plans as of yet. However, their reason for speaking at the conference of the Council of New York Family and Divorce Mediators was to promote the protocol as an idea to consider for other mediation centers, an idea which DePorto and Miller continue to champion (DePorto and Miller “The Protocol”).

5.6 Assessing the Results of a Collaboration

After establishing a presence in the community and advertising services, the mediation center is under an even greater spotlight to provide professional level services. There is ongoing concern for quality control in mediation. While national associations publish books of mediator guidelines, it is hard to accommodate the many kinds of mediation centers, and the Mediation Center of Dutchess County has added yet another category to the group. Some centers are privately run, while others are community-based and accept volunteer mediators. For the purposes of the proposal in this thesis, evaluating mediators becomes even more challenging because the evaluator must take into consideration the role of the counselors and advocates also assisting during the mediation process. Daniel McGillis, an expert on community mediation

programs, states that assessments of the experiences of participants often yield informative results about disputant satisfaction with the process, perception of mediator neutrality, satisfaction with the agreement, and stability of the participants' relationship after the end of mediation (McGillis 47). The potential mediation centers could send out participant satisfaction surveys during and after the counseling and mediation processes. Mediation centers could also compare general results and satisfaction levels to learn from each other about specific approaches that have or have not worked in integrating the two kinds of services.

One decision needed from project coordinators of the merger is which kind of approach to evaluation to use in their centers. A clinical approach to evaluating mediators and mediation centers often involves subjective measurement of the process, consultation with workers, feedback from program evaluators, and participant feedback from mediation clients (McGillis 52). A commonality of successful human services evaluation involves having both external evaluation, in which professionals who regularly assess human services institutions come to observe the mediation center, and internal evaluation, in which members of the center report how well the collaboration and the human services system as a whole is serving the clients (McGillis 55). In the first generation of mediation centers who copy the protocol of the Mediation Center of Dutchess County, additional lessons gleaned from overcoming bureaucratic obstacles and obstacles within mediation would serve to aid future organizational collaborations. This thesis promotes continued sharing of

information on conflict management and organizational tactics as a way for all centers to advance in serving the needs of all clients with histories of intimate partner violence who qualify for and are in need of alternative dispute resolution services.

Chapter 6

CONCLUSION

This thesis proposes replicating the protocol of the Mediation Center of Dutchess County. Their clients have histories of spousal violence and have no interest in prosecuting their spouse but are simply seeking divorce or custody agreements. In Dutchess County, instead of being refused mediation, which is typical, such people receive extra support services to help make the mediation successful. In the first chapter, a review of the history of policies on intimate partner violence, and my own direct observation of the experiences of victims of such violence within the criminal justice system revealed that there are many recovering victims and perpetrators of intimate partner violence whom the traditional court system is not equipped to help.

In chapters two and three, the thesis highlighted that the criminal justice system presents extra difficulties to members of specific populations: racial minorities, upper-income women, and male victims of domestic violence. Even people who are not members of these subgroups may have personal reasons for wanting to seek civil rather than criminal remedies for their abuse. While it is certainly true that many women in abusive marriages are literally too frightened to seek a divorce, there is a sizable group of them who both avoid prosecution and do seek divorces. There is

widespread agreement that mediation in general improves divorce outcomes, but currently nearly every mediation center systematically refuses to serve victims of intimate partner violence. For them, mediation threatens to do more harm than good if it is not accompanied by counseling focused on problems created by the violence in the relationship.

Currently, only one program combines counseling with such mediation, the program in the Mediation Center of Dutchess County in New York. The protocol does not aim to take the place of prosecuting perpetrators of intimate partner violence; however, as scholarship revealed, there is a population of recovering victims who do not wish to prosecute the perpetrator and only wish to extricate themselves from the relationship through getting a divorce. Restorative-justice-style mediation helps this described population achieve the most satisfactory divorce and/or child custody agreement and feel empowered to participate in the alternative dispute resolution process.

In chapter four, the thesis discussed and compared the opinions of four experts working in the fields of counseling, mediation, religion, and intimate partner violence. The interviews highlighted that working with victims' advocates could allow the mediator to carry out her goal of maintaining a neutral and safe space for clients, although the mediators were concerned that offenders could take advantage of the services and suggested that the perpetrator should have to take full responsibility for his prior actions before starting the alternative dispute resolution process.

In chapter five, the thesis applied lessons from the literature and interviews to answer the question of how the proposed mediation centers would run, by outlining how to integrate human services and follow up on new collaborations. Literature on human services collaborations revealed that techniques for merging other types of social services organizations could be applied to replicating the protocol of the Mediation Center of Dutchess County in mediation centers around the United States.

The thesis concludes that with careful integration of human services and training for mediators and victims' counselors, replication of the protocol of the Mediation Center of Dutchess County is possible. It is the aim of this thesis to propose the replication of the protocol so that the population of recovering victims and perpetrators of intimate partner violence who are seeking divorce and child custody settlements will not fall through the cracks in the legal system but rather benefit from collaborations between battered women's services, perpetrator rehabilitation services, and services in mediation centers practicing alternative dispute resolution.

The advocates and counselors working at the integrated mediation centers will be able to ensure that the agreements resulting from alternative dispute resolution have been constructed fairly and do not reflect power imbalances that existed in the marriage. Through tailoring the mediation process to the individual needs of the participants, mediators will be able to help to facilitate lasting agreements that better serve the interests of these divorcing couples and their children and, by doing so,

mitigate future conflict and promote equality, autonomy, and peace among concerned parties.

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APPENDIX A.

SPIDR Commission Recommendations Regarding Standards of Competence and Qualifications

The commission's seven basic recommendations for dispute resolution programs are broad-ranging and carefully drafted. They state:

- (1) The formulation of standards of competence and qualifications should be undertaken through a process of consultation with all stakeholders and should provide for ongoing review and revision.
- (2) Programs should clearly state their qualifications and ethical standards and their goals and values in a manner that can be understood by practitioners, parties, and the public.
- (3) In a pluralistic society, the development of qualifications standards must reflect an understanding of the context, the diversity of stakeholders, and respect for the variety of values and goals of all parties.
- (4) The context of the dispute resolution service must be examined and understood because it determines what should be considered competent practice in that context.

(5) The multiple paths to becoming a competent practitioner ought to be recognized, maintained, and expanded. Some combination of natural aptitude, skills, knowledge, and attributes acquired through an appropriate combination of dispute resolution training, education, and experience is the best route to ensuring practitioner competence.

(6) No one method of assessment should be relied on because it may lead to emphasis on one measure of competence at the expense of other valuable measures. Use of a combination of measures of competence also will reduce the likelihood of inadvertent discrimination.

(7) Assessing competence is key to ensuring quality service delivery and is a shared responsibility of practitioners, programs, dispute resolution associations, and parties.

(McGillis 70)

APPENDIX B.

Model Standards of Conduct for Mediators Approved by the American Arbitration Association, the Litigation Section, the Dispute Resolution Section of the American Bar Association, and the Society of Professionals in Dispute Resolution in 1995

I. Self-determination: A mediator shall recognize that mediation is based on the principle of self-determination by the parties.

II. Impartiality: A mediator shall conduct the mediation in an impartial manner.

III. Conflicts of Interest: A Mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediation shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.

IV. Competence: A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties.

V. Confidentiality: A Mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.

VI. Quality of the Process: A Mediator shall maintain the mediation fairly, diligently, and in a manner consistent with the principle of self-determination of the parties.

VII. Advertising and Solicitation: A mediator shall be truthful in advertising and solicitation for mediation.

VIII. Fees: A mediator shall fully disclose and explain the basis of compensation, fees, and charges to the parties.

IX. Obligations to the Mediation Process: Mediators have a duty to improve the practice of mediation.

Note: These model standards were approved by the American Arbitration Association, the Litigation Section, and the Dispute Resolution Section of the American Bar Association, and the Society of Professionals in Dispute Resolution in 1995.

(McGillis72)

APPENDIX C.

Key Issues for Community Mediation Programs

A wide variety of important issues in the community mediation field need to be addressed, including:

- The design of strategies for the statewide implementation and institutionalization of what were previously experimental programs, including mechanisms for funding, technical assistance, training, monitoring, and administration;
- The development of adequate and diverse funding mechanisms (such as surcharges on court case filing fees and fees for service from private sources) in addition to support from State and local governmental budgets;
- The development of appropriate approaches to the adoption of standards and quality control measures for program operations (including mediator selection, training, and monitoring) that preserve the ability of programs to innovate and recruit a diverse array of community members;
- The development of effective working relationships with local police, the courts, and the local bar;

- The development of techniques for avoiding excessive bureaucratization, which can ultimately lower program responsiveness and the quality of services rendered.
- The development of methods for enhancing public awareness of community mediation programs and their associated benefits in order to recruit a diverse array of community mediators, obtain referrals of cases, and generate general public support for program funding. (McGillis 22).