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Questions in Mediation: How Mediators Change their Language to Facilitate the Process of
Mediation

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Abstract

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By Kristina G. Juergensmeyer

My study looks into the language of mediation and how mediators use particular language strategies in order to facilitate the process of mediation as well as the conversations held in mediation. This research focuses on how language is used in mediation, what particular language features are found in mediation as well as how mediators adapt to dynamically different mediations through their use of language. My research goes even further into identifying certain tools that mediators use in their language in order to better facilitate the discussions about disputes and issues between the individuals in conflict.

In order to look into the linguistic features and differences in mediation, I transcribed 16 hours of mock mediations and looked into the specific linguistic forms and features found in these transcripts. I used linguistic analysis theories including Conversation Analysis, different kinds of pragmatic features typical of conversations, as well as Speech Act Theory to analyze the uses and purposes of the different language uses within the mock mediations. My analyses showed that there are specific question categories that mediators use in different mediations for specific goals and purposes. These questions can be categorized and applied to specific situations in mediations. Furthermore my research showed that there are several linguistic features that underline the inclusiveness of the mediation, equal power between the parties in the mediation, as well as the all-inclusive and informal setting of mediations.

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CHAPTER 1---- INTRODUCTION

In order to look into the linguistic features of mediators' language, mediation must be looked at as a conversation. Mediation training books do not provide descriptions of the kinds of language changes mediators can use to facilitate the process of mediation, nor do they look at what mediators do in the process of mediations. Rather mediation training manuals describe mediation tools such as reframing, reshaping, emphasizing neutrality and rewording statements of the parties. These tools, although valid mediation techniques, do not underline how experienced mediators speak in mediations, and they do not give details on how mediators should go about using these different techniques. Because of this lack of information about the tools available to mediators, there is a need for a linguistic analysis of mediators' language and detailed descriptions of the tools that they use.

My study looks into the language of mediation and how mediators use particular language strategies in order to facilitate the process of mediation as well as the conversations held in mediations. This research focuses on how language is used in mediation, what particular language features are found in mediation as well as how mediators adapt to dynamically different mediations through their use of language. My research goes even further into identifying certain tools that mediators use in their language in order to better facilitate the discussions about disputes and issues between the individuals in conflict.

In order to look into the linguistic features and differences in mediation, I transcribed 16 hours of mock mediations and looked into the specific linguistic forms and features found in these transcripts. I used linguistic analysis theories including Conversation Analysis, different kinds of pragmatic features typical of conversations, as well as Speech Act Theory to analyze

the uses and purposes of the different language uses within the mock mediations. My analyses showed that there are specific questions categories that mediators use in different mediations for specific goals and purposes. These questions can be categorized and applied to specific situations in mediations. Furthermore my research showed that there are several linguistic features that highlight the inclusiveness of the mediation, equal power between the parties in the mediation, as well as the all-inclusive and informal setting of mediations.

What is mediation?

Mediation is a form of Alternative Dispute Resolution (ADR) that usually involves two parties and a mediator. The mediator is considered the “qualified neutral” or unbiased individual who helps the parties communicate (Fisher & Brown, 1988). The main goal of mediation is for the parties in conflict to come to a mutual agreement about the issues that have arisen between them (Kovach, 2003). Mediators have a very important and delicate position in the mediation. They must simultaneously control the progression of the mediation, while also giving the parties control over the agreements, decisions and discussions between the parties. The parties participating in the mediation can be the individuals in conflict, (such as the couple in a divorce mediation) the lawyers representing the individuals, or even the parties with their lawyers (Kovach, 2010). Each of these circumstances requires a different approach, according to the mediation’s specific needs. This involves a great deal of flexibility, on the mediator’s role, in creating the approach that is necessary for the specific moment within each

mediation. Since mediations are centered on conversation and communication between the parties facilitated by the mediator, the mediator must have very adaptive language skills.

Who is the Mediator?

The role of a qualified neutral involves several limitations on the kinds of information that mediators can provide for the parties. Mediation is very different from judicial proceedings. Many mediators are not legally trained, but even if they are, they are not permitted to give legal advice (Arrow et al., 1995). In fact, an individual from any background may become a certified mediator. Not only do mediators come from various backgrounds, but they also work with diverse people from various educational, ethnic, and professional spheres. This feature of mediation alone requires mediators to be able to adapt their speech to many types of people and educational levels (Goodman, 2005). Mediators are strongly encouraged to remove any kind of law focused speech from their mediations (Goodman, 2005). Certain words such as *conflict*, *impasse* or even *settlement* can be unclear and cause anxiety to individuals without legal knowledge or higher levels of education.

Along with adapting to the parties in the mediation, the mediator must also adapt to the emotions of the individuals, statements of the parties, and the parties' willingness to cooperate (Fisher & Brown, 1988). These can vary largely and change quickly during the mediation. In these situations mediators must make immediate alterations to their language in order to calm tense situations, remove blame from statements or even encourage individuals to move forward in negotiations (Robbennolt & Sternlight, 2012). In order to adapt to these quickly changing circumstances with their real-time unprepared (unscripted) speech, mediators focus

on practicing and learning certain language altering strategies in order to achieve particular changes during tense or nonproductive situations.

There are several situational instances that cue mediators into deciding what the next step in the mediation should be. Some of the more obvious ones, such as fighting or yelling, constant interruption of the speaker or even threatening may point mediators to more than just conflict and anger between the parties (Robbennolt & Sternlight, 2012). For example, aggression is often seen as a need for the individuals to further express their emotions, opinions, and positions in the controversy. Mediators may either start a private meeting with the person in hopes that they are more likely to reveal information to the mediators themselves, or the mediator may encourage the individuals to tell the other party about their issues.

Mediators' language adaptations also involve constant awareness of the reactions or underlying feelings of the parties. Parties may react (to various instances, statements, and discussions) with more emotional reactions or they may calm down. Simply put, mediators must observe the reactions to utterances in the mediation and make stylistic choices based on these reactions. Furthermore, during the course of a mediation, mediators may discover a deeper or previously unknown conflict between the parties since the mediator is not told much about the conflict or the parties before the mediation starts. Mediation often includes discoveries of underlying information that end up having a large effect on the mediation, such as previous cheating in a divorce case, or previous law suits and broken agreements between business partners (Frenkel & Stark, 2008). Previous issues such as these may force mediators to help the parties deal with the grudges and the remaining emotions so that they can actually get

to the main issues for discussion. Although essential in all mediation, these kinds of situations call for the mediator to concentrate on promoting effective communication between the parties.

Mediators might also be faced with difficult situations that involve controlling various over-expressive (anger, aggression, accusation, high emotion) speaking features between the two sides. One side may simply be much more outspoken than the other, causing the other party to appear reluctant to speak. In these situations mediators try to encourage all individuals to share anything that is on their minds about the situation. Mediators must both retain control of the process of mediation but simultaneously allow many opportunities for the sides to express their concerns (Robbennolt & Sternlight, 2012). Mediators may often use private meetings in these situations, similar to the strategy when parties become agitated. Rather than trying to get the parties to focus on the current issues rather than past issues, they ask the parties open ended questions that encourage them to share their thoughts as well as their wants and interests in the particular conflict. Focus on the parties' true wants and interests is often a problem when lawyers are present with their clients in a mediation. Lawyers can be very goal focused and do not give their clients options for what they may want, such as an apology, but simply focus on getting their client the best monetary deal (Ronald & Mnookin, 1995)

One of the major advantages of mediation when compared to litigation is that mediation allows for the discussion of any and all problems that two parties have with each other, and allows individuals to have a chance of expressing themselves and their wants (Kovach, 2010). An interesting strategy that is discussed in mediation books is the mediator's

attempt to focus on the future (Schrock-Shank, 2000; Folger & Bush, 2001). When personal fights and anger interrupt the negotiations between the parties, the mediator focuses on the future rather than the past relationships between the parties (Fisher & Brown, 1988). Future focus is often emphasized through questioning the parties about their continuing personal or business relationships, or any desire to continue working together or communicating outside of the mediation. Mediators also focus on future benefits that the parties could have for each other (Kovach, 2003). If the aggravation is stemming from feeling misunderstood, unrecognized or mistreated, the individual may need a formal apology or admission of guilt from the other party. Mediators try to encourage these types of exchanges when needed but it can often take several independent meetings with each party to reach the desired result.

The Language of Mediation

The linguistic strategies that mediators use to adapt their language to various mediation situations is the focus of this current study. There are several strategies involved in this research which mediators are taught during mediation training. These strategies are often discussed in books on mediation as “methods for communication” (Kovach, 2003; Hill, 1998; Folger & Bush, 2001). However these strategies are not well defined or are explained but only taught by giving examples and retelling individual experiences. Consequently, there is a need for a better linguistic explanation of the various strategies actually used in mediation.

In order to better teach mediation strategies to mediators from all different positions in life, a linguistic analysis of the methods used by mediators is necessary. Focusing on a linguistic analysis for teaching mediation would make the mediation strategies more accessible to trainees from non-law oriented backgrounds and would give better explanations of the actual

techniques used rather than focusing on learning through mediation examples. To identify and analyze the linguistic procedures, steps and definitions that are used by mediators, linguistic methods from Conversation Analysis will be applied in order to analyze the different linguistic phenomena that occur in the speech of mediators. Conversation analysis emphasizes looking into the natural formation of language especially in a back-and-forth conversational context (Sidnell, 2013). Since mediation is based on real-time language production, it is very important to view it as a conversation rather than a semi-scripted court procedure (Miller, 2006).

Although certain parts of mediation can be scripted, such as a mediator's introduction and explanation of the guidelines of the mediation, the large majority of the process is focused on unscripted questioning, answering, expanding, explaining interests and negotiating (Kovach, 2010). The parties do not typically have prepared statements but they informally discuss the situation, particularly their wants and interests in the conflict. Because of this specific focus in mediation, as well as mediation's emphasis on naturally produced, informal and nonspecific language, Conversation Analysis is an appropriate linguistic analysis for looking into the language of mediation.

Mediators' Roles

In order to facilitate the mediation and move negotiations forward, mediators concentrate on creating a comfortable, often informal environment for the parties to successfully discuss and negotiate between each other. The mediators explain the process of mediation and help the parties begin their discussion and negotiations by identifying the facts and details about the situation and then aiding the two groups in identifying their different

areas of agreement (Goodman, 2005). Typically, after the mediator sets a stage for the discussion and interaction between the two parties, the parties begin to share more, express their wants, and most importantly understand the situation from both sides (Kovach, 2010). Mediators first tend to focus on finding common ground between the parties. This common ground can vary enormously between the different kinds and dynamics of mediations. Parties in business mediations may share a common interest in continuing their buying and selling of goods after the resolution of the conflict. Divorce parties may share a common interest in keeping their child in the same school, or having two children stay together rather than be separated (Blades, 1985). Even lessor-tenant cases can have a common interest in the tenant remaining in the apartment but having a change in their lease or rental agreement (Frenkel & Stark, 2008).

Mediators must act as very active listeners to find the commonalities between different viewpoints and then highlight them to the parties. Once all (or most) of the issues between the parties are discovered, the mediator facilitates discussions on one of the issues, often the one in which the parties share the most similar interests and wants (Kovach, 2010). The mediator will often encourage the parties to come to a mutual understanding on one of the smaller issues and then move on to the larger and usually more intricate issues (Frenkel & Stark, 2008). This strategy often helps the parties see each other's shared interests and the possibilities of finding common ground and possibly common solutions on larger and more intricate points. If parties revert to arguing, mediators will often reference any previously made agreements in order to underline the progress already made (Robbennolt & Sternlight, 2005).

Since the majority of each mediation is unscripted the conversational structure is produced in real-time, it is essential that mediators have extensive and intimate understanding of the linguistic techniques they have available as well as good examples of the techniques that can be used in combinations or independently as needed by the mediator. Although mediation books and training classes discuss these linguistic-mediation strategies, their importance and some examples, there are rarely in-depth explanations of how to apply and use these strategies. The lack of detailed descriptions of mediation strategies calls for an investigation into the types of linguistic-mediation techniques that mediators use as well as how they use them in combination with their own language to move the process forward and how they linguistically create an environment for productive negotiations.

Mediator strategies

The nature of the mediation process makes the mediator's language skills and linguistic strategies very important. Mediation has a rapidly changing nature, for which mediators must be prepared at any time to change their language and interactions with the parties for a desired effect (goal oriented language). Mediators must constantly be aware of, control, and adjust their language so as to keep the mediation moving smoothly and to provide an opportunity for the participants to negotiate.

The differences in cases sent to mediation, the diversity of participants in the mediation, and the abundance of strategies available to mediators call for a certain amount of regulation of the different strategies used in order to appropriately prepare mediators for as many situations as possible. Better guidelines, definitions and identifications of the different

mediation strategies will provide mediators with more standardized options for effectively facilitating effective communication between the parties. Different mediation strategies may also be more effective in resolving or even identifying underlying emotional issues or personal needs of the parties. This could lead to better and especially wider resolved issues that may not be present in court litigation proceedings. In other words, the identification and availability of different mediation strategies would help mediators give parties the full advantage of mediation, in terms of identifying, communicating and hopefully resolving issues between the parties that extend past the larger legal issues of the mediation. Identifying and resolving these underlying issues can help parties reach agreements on the larger and often more complicated legal issues at hand (Kovach, 2010).

Throughout the mediation process if both parties are completely satisfied with the agreement from all aspects it is more likely that the agreements drafted in mediations will hold up, rather than the agreements being broken (which often happens from unsatisfied parties agreeing in mediation but then changing their mind because of issues they still think are unresolved or were not addressed) and sent again to mediation or to court (Ronald & Mnookin, 1995). The purpose of mediation, of course, is for the parties to be satisfied with an agreement on a legal issue which is reached by mutual discussion and negotiation between the parties. The effectiveness of these agreements is not focused on by mediators, but the effectiveness of these agreements is an important purpose of the mediation process especially when compared to other dispute resolution processes.

The interrelation of mediation and language is evident simply from the structure of mediation. The definition of a mediator as the “interpreter for communication between the

parties” emphasizes the importance of good communication (Goodman, 2005). Without effective face-to-face back-and-forth conversation between the parties, the conflict would result in the parties not being able to speak their opinion and discuss possible solutions. Parties are able to discuss possible reasons for what led to the conflict, as well as other influences outside of the direct issues that could cause certain issues in the parties’ relationships. Mediation is not aimed towards blaming a party for their actions or even attributing certain situations to the actions of a party (Frenkel & Stark, 2008). The mediator focuses on concentrating on the future relations of the parties and discourages statements of blame or fault (Jacob & Aakhus, 2002).

The mediators’ retained focus on productive and efficient communication between the parties can help resolve issues in miscommunication between parties (Fisher & Brown, 1988). In certain cases parties will have had many occasions to communicate (before arrival at mediation) and there may be a barrier keeping them from properly communicating. In other situations parties may never have spoken to each other, in which case communication is the first step to identifying the issues and positions of the parties. Communication is also the first step in identifying one’s wants. Each party may be set on a certain result but when they begin to communicate with the other parties and hear the possibilities of negotiation and the views and needs of the other parties, they can completely change their position, their wants and interests (Fisher & Brown, 1988). Discussion of all the wants and interests that a party holds is another advantage of mediation when compared to other dispute resolution strategies available. In order for mediators to effectively give the parties participating in mediation the advantages of the mediation process, they must be able to adjust their strategies to the

constantly changing dynamics. Without such a versatility of techniques available to the mediator, mediation would take on much more strict and step by step processes without much of the freedom for both the parties and the mediator. The differences between mediation and other conflict resolution processes are largely evident in the various availabilities for effective communication facilitated by the mediator.

Mediation Training

In order to look into how mediators adapt and alter their language to fit the situation, mediations were observed and analyzed from the perspective of a linguist. A linguistic analysis of mediators' language provided a better idea of what kinds of mediation strategies mediators are using and what steps they take in order to change the views and attitudes of the parties or issues in the mediation. A study such as this will provide better guidelines for mediation training, as well as linguistically focused identification of the language strategies used. Although mediation training is typically very effective and often emphasizes the personal styles of each mediator, a congruent set of guidelines of the possible techniques that are available for each mediation would help train mediators from different backgrounds, educations, and experience with mediation, law and other forms of ADR.

There are many mediation books and mediation training manuals that describe the basic ideas of the most important and prominent mediation techniques (e.g. Schrock-Shenk, 2000; Lemmon, 1986; Levdansky, 1983). Many scholars in mediation are concerned with how these works focus on learning through experience (Gmurzynska & Morek, 2014; Kovach, 2003; Goodman, 2004). Although this is often a very informative way of learning, it does not make the best use or inclusion of the wide variety of techniques available to each mediator. It can cause

problems for specialized mediators within real-time, quickly changing, complex and diverse mediations. Although a certain set of strategies may work for a mediator for a few cases, eventually they will be confronted with situations for which they are not prepared. Without proper understanding of the range of mediation techniques available to each mediator, such conflicts can cause mediators to stumble on the issue and lose control of the mediation process and the parties.

In order to give mediators and mediation trainees a better understanding of all the tools available to them when mediating in different cases, analyzing the mediators' use of language will provide insight into the techniques available to all mediators. This linguistic research will show new as well as experienced mediators additional techniques that can be used in a diverse variety of mediation situations. This will not only give a different perspective for techniques used in mediation, but also provide a more universal and accessible standard for mediation trainees removed from a legal background.

CHAPTER 2 ---- LITERATURE REVIEW

In the study of mediation there have been few analyses about the language used by mediators to facilitate the process of mediation between parties in conflict. Cobb and Rifkin (1991) study the rhetoric of neutrality and look into the different definitions of neutrality defined by mediators and their personal approaches to neutrality in mediation. Jacobs and Aarkhus (2002) examine the word use of mediators but focus on how mediators approach disputes and the processes they use in order to determine the appropriate courses of actions to apply to the mediation. My research focuses on using linguistic analyses to identify the common language strategies and specifically question categories and forms that mediators' use in mediations. A linguistic analysis of these strategies provides details about the tools available to mediators and mediation trainees to better adapt to a variety of diverse mediation situations.

The literature reviewed below begins with the use of conversation in mediation. The chapter goes on to linguistics and pragmatics and reviews the different linguistic techniques used in this study for the analysis of the language of mediators. These sections focus on pragmatics and speech act theory and their application in the conversations in mediations. Reality testing question, an important mediation tool, are discussed towards the end of the linguistic portion of the chapter. The focus of the chapter then switches to describe the mediator's role in mediation, the steps of mediations, and a description of the general mediation process. The chapter underlines the advantages associated with mediation as compared to other types of dispute resolution.

Mediation as a Conversation

Most importantly, mediation is a conversation about conflicts, arguments, and solutions relating to broad issues, including legal issues, between two parties. Mediation focuses on interests in terms of the legal and emotional issues between the parties, and how to work out an agreement. The goal of mediation is to find a “mutually agreed upon solution” to any and/or all of the issues presented (Kovach, 2003). Mediation is a confidential discussion between the parties in conflict, facilitated by a mediator, sometimes referred to as a “qualified neutral” (Kovach, 2010). Different styles of mediation exist for different types of conflict. Civil, juvenile, family, tenant-lessor, and business conflicts are the most common types of issues brought to mediation and all vary greatly in dynamics as well as party participation. Mediation has a flexible format that changes for each individual mediation according to what the parties and the mediator believe is needed (Goodman, 2005).

Conversations are the center for human interaction. They not only allow us to relay information back and forth between individuals, familiar or unknown, but also help us connect with other humans on different levels, of similarities, differences, histories as well as personal interests and attitudes. Mediation uses conversations between individuals in conflict in order to work through their issues towards a mutually agreed upon solution. My research looks into the kinds of speech features that are important and commonly used in mediation and how they are used by the mediator in order to facilitate a productive conversation in each diverse mediation session.

A conversation is defined as an “informal exchange of information, ideas, etc., through spoken words” that involves discussion between at least two individuals (Miller, 2006). Conversations vary from general information sharing, demands, or even admission to lies and faults. Conversations are based on a turn-taking process in which expressions alternate between speakers who are involved in the conversation. At any given point there is generally a speaker and at least one, if not several, listeners. These roles switch many times within the conversation and can change the power dynamics of the conversation at any given point (Markee, 2000). Other linguistic features of conversations, such as silence, requests, and simple statements can have different kinds of underlying meanings within the utterances themselves (Miller, 2006). These underlying meanings can be affected by many aspects of the conversation but most typically are dependent on the goal(s) of the speaker(s).

Mediation is a very unique type of speech event in which at least three parties engage in a conversation that include negotiations over specific legal and personal issues. Mediation uses conversations to help individuals discuss their issues and work out possible agreements and solutions to these situations. The organization of a mediation has a different dynamic, than say, social or friendly conversation but focuses on the same productive goals (information exchange, request for action, similarities between individuals) in the interactions and social functions of a conversation (Robbennolt & Sternlight, 2012). Conversations are often referred to as relationship building, since they help individuals make connections by finding commonalities and opinions (Miller, 2006).

Linguistics and Pragmatics

All of these aspects are important in mediations and negotiations as the participants are attempting to bridge gaps between the issues as well as understand all the dynamics of each side of the conversation (Fisher & Brown, 1988). The mediator provides a comfortable language environment in order to facilitate an important and productive conversation over the issues (Fisher & Brown, 1988). The conversations and agreements that occur in mediation can have legal standing and importance. This can often make individuals uncomfortable and reluctant to participate fully in the conversation (Fisher & Brown, 1988). Because of this, mediators use several conversational linguistic strategies in order to help individuals have a productive conversation. Investigating the details of the language used in the conversation is essential to understanding how mediation functions and how mediators create positive negotiation environments.

Not only is a mediation concentrated on the linguistic definitions of a productive conversation, but it also falls under the theory of legal discourse. Although mediation does not make use of the typical legal discourse found in trials and courtrooms, it is a form of legal discourse having to do with resolving issues and understanding the facts of a specific situation (Galdia, 2014). Study in legal discourse is focused on “nature, functions, and consequences of language use in the negotiation of social order” (Galdia, 2014). This research focus needs to be narrowed to describe mediation discourse, as mediation is not strictly focused on “social order” but instead tends to focus more on social relationships, personal issues, and, of course, legal issues. The use of the phrase “social order” (in this context meaning legal restrictions and rules that govern society) is off-putting when speaking of mediation, as mediation traditionally does not demand that a specific negotiation deal with the “proper social order” of the issues at hand,

but leaves the possibilities of solutions open to the participants (Galdia, 2014). An edited version of this definition that would be applicable to mediation would focus on the establishment and negotiation of practical, realistic social contracts between the parties. This is to say that the types of negotiations and agreements discussed in mediation discourse focus on realistic solutions that both parties are able to act on as well as agree on.

Conversations occur in a huge variety of contexts that focus on everyday interactions and social life. A conversation is traditionally viewed as an event that involves being face-to-face with the individuals involved in the conversation, but modern technology has greatly changed the possibilities for holding a conversation between individuals (Miller, 2006). The uniqueness of mediation involves this traditional idea of a face-to-face conversation and the exchange of ideas and knowledge on a certain topic. Mediation also tends to focus on having an informal setting for conversation, unlike many of the other legal processes for dispute resolution and negotiation (Kovach, 2010). In this case, informal conversation uses first names for referring to all individuals present, as well as keeping all turn-taking to a casual back-and-forth, rather than a strict question-answer sequence as often seen in court rooms. A commonly used term within linguistic analyses of conversations, for a specifically goal or purpose oriented conversation, is a “solid conversation” in which individuals focus on certain productive goals and achievement for the conversation (Miller, 2006). Mediation conversations are purposeful and each have a unique set of goals that are determined during the course of the mediation, but all mediation conversations focus on the goal of a productive exchange of ideas, issues, agreements, and possible solutions (Fisher & Brown, 1988). These definitions show the variability of types of conversations, but mediation focuses not on the success of an agreement,

but rather on the success of the actual act of conversation, the exchange of information and creation of connections between the individuals in the mediation (Miller, 2006).

In order to look into the details of the linguistic features used in a conversation, discussion, or in this case mediation, pragmatics can be used to dissect the linguistic features used in the language of different individuals. Pragmatics is the study of the meaning in speech and communication focusing on the speaker's linguistics knowledge and contexts (Allott, 2010). Different theories within pragmatics claim different things about the use of language in conversations as well as the use of language as an action. Certain areas of pragmatics focus on how speech is used for a goal, speech as a determining act, and even speech accommodation as ways that individuals use their language for certain purposes (Allot, 2010). These phenomena are often associated with communicative competence, the ability for a speaker to understand the other individual's language and purpose, as well as to successfully get across their purpose or goal (Ostman & Verschueren, 2009).

Mediation is a conversation in which the mediator uses different types of language features to help move along negotiations and facilitate a productive conversation for the parties. The different pragmatic features used can give an insight into how the mediators facilitate this conversation as well as what changes the mediator makes to his own language in order to aid the parties present at mediation. Certain pragmatic features, such as silence, speech acts, and questions are put into use as a way of moving negotiations and conversations in a particular direction (Allot, 2010).

Speech Act Theory and Speech Acts

Speech Act Theory is an area of research within the field of pragmatics that focuses on how language is used for certain purposes, beyond simply exchanging information (Sadock, 2004). Speech acts can be presented in a variety of ways. Simple statements often have underlying meanings that request certain information, or even make assumptions and guesses that have to do with the conversation topic or speech situation. More obvious speech acts include placing bets, giving orders, and giving and taking wedding vows (Allot, 2010). Speech Act Theory is based on the proposition that all linguistic utterances are acts, and not simply statements of information or observations without a purpose (Sbisa, 2009). Research in this theory has a particular focus on how speech acts are used in different speech events. Speech act theory emphasizes analyzing how and what kinds of effects different utterances have in different kinds of conversations and settings (Sbisa, 2009). Speech acts can have varying effects on the conversations in which they are used, therefore it is very important to look in detail into how they are used in various conversational settings.

In situations with legally or contractually binding outcomes, the individual who performs the speech act usually holds some kind of authority over the process or the event taking place through the speech act (Allott, 2010). The individual has some experience, training or practice in the speech event taking place and in the process for which the speech act is being performed. In the same way that only individuals who have marriage licenses can pronounce the words “ I now pronounce you man and wife” with a legal and real effect, each effective speech act includes a certain degree of authority over the process usually includes training or inclusion in a certain authority group. This is important when looking into the way that mediators use speech acts. The effectiveness and usage of these speech acts shows what

authority the mediator has over the process and steps of mediation rather than the actual decisions and negotiations made in the mediation.

Speech acts are not only important for their actual usage and effect in the real world, but also their impact on the speech situations or conversation. Speech acts can change the dynamics of a conversation or interaction by causing certain individuals to show their authority over others (Saddock, 2009). These acts can also emphasize particular aspects of a conversation and areas that still need to be discussed. Speech acts as signs of authority can change the focus of a conversation either away from or towards the individuals with the authority to perform a speech act (Sbisa, 2009). The authority associated with performing speech acts can be important in mediation because of the general trend of keeping all parties equal as well as the mediator in a neutral position as opposed to having the mediator show significant authority over the parties as in a trial by a judge. Speech acts are an essential part of human conversation and are extremely important in situations with sensitive authority levels as well as changing conversation dynamics.

Speech Act Theory discusses how each type of utterance has a purpose or is performing a particular function. This theory tends to look into what actions and underlying intentions different kinds of utterances have as well as for what purposes individuals use them (Sbisa, 2009). Speech Act Theory states that there is an “illocutionary meaning/point” behind every utterance (Sbisa, 2009). This “illocutionary meaning” refers to the action or underlying statement that is being made by the individual’s utterance (Allott, 2010). Illocutionary meanings can also refer to the beliefs a person has and states based on their utterance (Allot, 2010). Jacobs and Aakhus argue that arguments are actually “subordinate speech acts issued in

support of or in objection to some main subordinate act (or utterances)” (2002). Their view puts a very different perspective on the practice of back and forth argumentation as well as negotiation. Since arguments contain these underlying meanings, there are several questions of how the hearers in conversations are able to identify the illocutionary acts being portrayed, as well as form an appropriate response to the argument being presented (Allott, 2010). These features and extensive relationships between the utterances and various underlying meanings make analysis of speech acts very intricate and highly reliant on the utterances as well as the responses to the different speech acts uttered.

Questions

Another feature of pragmatics that is important in the analysis of conversations and discourse is the examination of questions (Sadock, 2004). There are many different types of questions that are used for different purposes and can indicate different directions of questioning. Questions have several purposes and can be used not only to request information, but also to request an action, change the view point of a statement, question an aspect of a previous statement, as well as to indicate a change in the process or event taking place (Dillon, 1990). Questions vary greatly in purpose as well as structure (can be questions in the form of statements or vice versa) and can be used in order to encourage a certain answer, or on the other hand encourage a free answer without much direction to what the answer should be, but rather to encourage a thinking and brainstorming process (Dillon, 1990). Two main kinds of questions are open and closed questions. Closed questions are centered around having a “yes/no” answer or a direct statement to answer the questions asked and minimal expansion on the topics (Ostman & Verschueren, 2011). On the other hand, an open question allows the

answerer to produce any kind of creative and expansive answers that they want (Dillon, 1990). Open questions are set up to encourage an extensive and encompassing answer (Dillon 1990). This means that when individuals ask open ended questions they are allowing for a longer answer generally with some kind of expansion or elaboration on the question and topic that was asked about (Dillon, 1990). These kinds of questions can have several different usages and different intentions.

Furthermore questions can also be used as requests for action or as rhetorical in nature. These two are not mutually exclusive and often stand together in terms of the purpose behind their usages. Rhetorical questions are similar to statements in question form, as they are not intended to have answers or in some cases even be answered (Miller, 2006). This is particularly interesting because of the possible uses associated with these kinds of questions. Rhetorical questions can also be used in order to point out a different point of view or different emphasis on the situation of the conversation (Dillon, 1990). The use of rhetorical questions is very widespread and allows for another interesting dynamic in conversations. Questioning the validity or possibility of a course of action is often presented as a rhetorical question but provokes the questioned to look at the situation in a different light or from another individual's position (Dillon, 1990). Questions are often associated with expanding knowledge of a topic or looking deeper into a conversation, but questions can be used for all different types of purposes.

Reality testing questions

Another specific kind of question that is used in mediation is the reality testing question (Kovach, 2010). This leads back to the idea of provoking individuals to rethink situations from different standpoints as well as from realistic view points. Mediators tend to use this type of strategy to help the individuals in mediation recognize the “do-ability” of an agreement or more importantly the issues of the reality of the situation (Goodman, 2005). Realizing the reality of the situation is often essential in mediation as the agreement that the parties conclude with must be not only mutually agreed upon, but legally binding. If the parties do not think through all the realities of the issues from all sides and positions, then the agreement will not hold up, and consequently the issues will proceed back to litigation or to further mediation. This kind of reality testing question stems from the general mediation strategy of pointing out all the important considerations for the parties to think through while they consider all possible options for agreement. Because of this, these questions are generally focused on bringing out certain aspects of the agreement that could be problematic as well as any aspects that seem unachievable to the mediators as well as for one or both of the parties (Dillon, 1990).

Mediation

There are two main types of sessions that occur within mediation. The first is the “joint session” which includes the mediator meeting concurrently with all the individuals from both parties to discuss the issues at hand (Kovach, 2010). This can be very productive in understanding the facts, the issues, and how the other party sees the same situation, but can get out of control because of the emotions and many pre-existing biases that accompany many conflicts. The other type of session is called a “caucus” in which one party, or even just one individual, meets with the mediator at a time (Kovach, 2010). The mediator meets individually

with both parties in order to give both parties equal opportunities to speak privately with the mediator and maintain the rules of neutrality and impartiality. This can be used to receive extra information from the party or simply to settle emotions between the parties and remove the tension of the parties being face to face (Frenkel & Stark, 2008). Due to the large variation in the many areas of mediation, including character of the dispute, who the participants are, and past relationship dynamics between the parties, mediators may use these two different types of sessions to adapt to the specific mediation dynamics. (Gmurzynska & Morek, 2014).

Mediation tends to consist mostly of joint sessions if communication between the parties (with help of the mediator) flows smoothly (Gmurzynska & Morek, 2014). On the other hand, mediation may consist mostly of caucuses if there are many obstacles in communication and the exchange of information between the parties (Gmurzynska & Morek, 2014). Mediators may also organize individual sessions with each side to address specific issues such as emotional barriers, lack of communication, withholding an offer, etc.

Mediation is a largely voluntary process (individuals must agree to meeting with the mediator but are not required to go through the mediation process), but many courts mandate mediation before cases go to trial, specifically for business and lessor-tenant disputes (Kovach, 2003). Because of such diversity, mediation can have different dynamics in terms of the parties' willingness to negotiate or even converse. Not only do the parties in conflict vary greatly, but the representation of each party also changes from one mediation to another (Gmurzynska & Morek, 2014). A party can simply be an individual representing themselves, or can be represented by the owner of a large company. In divorce cases the parties often consist of each spouse representing themselves (Coogler, 1978). In family and divorce mediations it is

important for the individuals in dispute to be present at the mediation, rather than represented by lawyers, because they often create deep emotional involvement and tensions not present in other types of mediations (Macbeth, 2010). Other types of mediation can include combinations of lawyers, company representatives and business owners, possibly individuals who have never met before the mediation. The various possibilities for previous encounters between individuals presents a very different dynamic, often of detachment from the more emotional and personal aspects of the issues (Robbennolt & Stark, 2012).

Often when there are very intricate legal issues, individuals will come with their lawyers in order to understand and work with the legal details, such as specific details of the agreements, legal issues between the parties, as well as the legalities of certain agreements being agreed upon often between representatives of larger companies (Kovach, 2003). Very often they also provide emotional support for their clients since they have an obligation to act in the interest of the client. Lawyers can actively participate in the mediation or be present for reassurance of the legal and financial standings of parties (Kovach, 2003). The lawyer's involvement in mediation can drastically change the dynamics of the mediation. Lawyers are often trying to get the most out of the mediation for their client, even though mediation is not focused on what lawyers term as "winning-and-losing." They also focus on placing blame on one party or the other, rather than concentrating on a solution that the individuals in conflict are satisfied with (Robbennolt & Sternlight, 2012). Such an approach may come from the traditional view of the conflict characteristic for a court and making an assumption that when one party wins then another one loses.

One important qualification of the parties that come to mediation is their ability to make executive decisions on the issues. If a company sends a representative that does not have power over decisions, then the mediation cannot truly progress. This is because any solutions brought about by the mediation would have to be approved by individuals with full authority to settle. Without such authority, participating in such negotiations would not be considered to be in good faith. Such participation would be rather meaningless and the mediation would not be able to progress towards a resolution (Frenkel & Stark, 2008). On the other hand, even if a company or individual simply sends a lawyer in order to represent them who “has authority to settle,” the other party might feel as if there is the lack of a connection between the parties because of a lack of business representatives and may be less willing to negotiate productively with a lawyer that was not directly involved in the conflict (Robbennolt & Sternlight, 2012). Mediators usually initially ask the parties about their ability to make executive decisions for the sides that they represent and will generally only mediate with individuals who are able to commit to agreements and resolution of the issues (Robbennolt & Sternlight, 2012).

Mediation is often defined as one of the Alternative Dispute Resolution methods or ADR. There are many ADRs which exist within the court system and outside the court system. They are all intended to help individuals and groups have an alternate way of working out conflicts and issues, other than having a court proceeding (Kovach, 2010). Mediation, which, because of its broad application is sometimes called the “mother of ADR”, gives the parties the opportunity to talk through the issues and offer their ideas for resolutions and agreements in order to work out the conflict(s) at hand (Kovach, 2010). Mediation allows parties to have a face-to-face discussion/conversation about their issues. This allows them to be directly involved

in resolving the issues rather than having a third party decide on the outcome (Kovach, 2010). Mediation gives both the parties the opportunity not only to talk through all the issues involved in the dispute but also how they may influence the process and the outcome of the mediation. These issues do not necessarily always have legal meaning but often involve emotional damage or personal offense (Kovach, 2010). Face-to-face discussion also allows the parties to express their expectations that are not monetarily driven (Kovach, 2003). For example, some disputes involve one party simply wanting an apology from the other party. However this can often lead to problems as an apology is often viewed as an admission of guilt (Robbennolt & Sternlight, 2012). But in mediation, parties are able to discuss all consequences of such apologies even if the apology causes certain hardships related to the confidentiality of the mediation. The party who apologizes can be assured that the statement of apology will not be used against them (as an admission of guilt) in further proceedings in the courts (Gmurzynska & Morek, 2014).

Another advantage of mediation is the ability for the parties to look at their past, current, and future relationships (Goodman, 2005). These relationships can be strictly business oriented, contract agreement oriented, or family/parentally oriented. The mediator often asks the parties about their wants, interests and willingness to continue the relationship that they currently have (Frenkel & Stark, 2008). The continuation of these relationships can also lead the parties to different types of negotiation or different directions of discussion. For example, if a landlord and tenant decide that they do not want to continue their living/renting agreement then they would focus their negotiation on how and when the tenant will move out and how the two will stick to the agreements made in mediation following the move out (Goodman, 2005). If two businesses are mediating over damaged products, but they decide to keep their

business partnership, then the parties can negotiate in terms of future business deals as well as contract lengths and amounts (Goodman, 2005). Establishing the future relationships of the parties is essential for directing the mediation in one direction or another.

In mediation, the parties are able to express their wants and more importantly the intentions behind their wants. In family mediations, and other mediations involving previous personal relationships, explanations for the reason behind wants/needs can help one party better understand the other party's situation (Macbeth, 2010). These explanations can give both parties better perspectives of not only their interests but also the practical possibilities for resolutions. For example, if one party is asking for a certain single sum payment from the other party, but then they find out that the other party is in bankruptcy, the initial party may rethink the payments, and suggest a monthly or yearly payment in order to make the agreement more palatable than it otherwise would have been (Macbeth, 2010).

The mediator then uses the different steps of mediation (i.e., joint sessions, caucus, discussion with lawyers, agreement points/commonalities) to help the parties to have a productive conversation about resolving the issues between them (Goodman, 2005). The mediator sometimes acts as a medium of communication between the two parties. If there are negative attitudes, emotions and other barriers between the parties that are not allowing them to hold a productive conversation, the mediator will meet with the parties separately and relay information from one party to the other (Fisher & Brown, 1988). This physical separation of parties is sometimes necessary, and the party's hearing propositions and negotiation points from the third party neutral can be perceived as less biased, less manipulative, and fairer. The parties may be more agreeable and reasonable, when hearing information from the mediator,

who is neutral in the conflict, instead of hearing it from the other party (Robbennolt & Sternlight, 2012). In this way the mediator serves as a translator between the parties, rewording, restating, or even summarizing information between the parties in order to help them communicate efficiently. The mediator gives the parties a medium through which to ease communication between the sides.

Finally mediation's focus on the past, present, and particularly the future, contribute to its usefulness as an Alternative Dispute Resolution method. Court proceedings and trials are focused on the facts and events having directly to do with the issues at hand (Haynes, 1981). Past relationships between the parties as well as the future consequences on those relationships are not taken into consideration in court proceedings (Haynes, 1981). Discussion of the past as well as the future can help parties in conflict acquire a better perspective of how dealing with the situation would affect the relationships between the parties (Frenkel & Stark, 2008). In addition it can also bring up older, more deeply rooted issues that could have an effect on the parties' willingness or unwillingness to negotiate further (Frenkel & Stark, 2008). Discussion and identification of these underlying ideas and predispositions allow the parties to gain a different perspective and look at the current issues while keeping in mind their past biases and future wants for relationships. All of these considerations help the parties and individuals look at the problems from a different point of view and move towards more productive conversation as well as move towards a better common ground with the other individual.

Mediators and Their Responsibilities

Mediators have a very powerful yet delicate position in the mediation, since they must simultaneously exercise authority over the process and allow for free talk and negotiations for the parties. The mediator generally leaves all possible directions of negotiations and solutions up to the parties, but encourages them to focus on resolution and dialogue on certain issues that can be resolved (Fisher & Brown, 1988). In most mediation settings, the mediator is not allowed to suggest possible solutions, but rather can suggest and underline possible points of discussion or solutions that the parties can focus on (Coogler, 1978). In some court mandated mediation, if an agreement is not reached, the case goes straight to trial (Kovach, 2010). In these cases, mediators are allowed some leeway in terms of suggesting a solution to the problem (generally only towards the end of the mediation) in order to help keep the dispute from going to trial (Kovach, 2010). The mediator listens to the parties' recollection of the events, their personal wants, issues and needs, and identifies the similarities as well as dissimilarities between the two parties (Goodman, 2005). Mediators often try to focus on these similarities in order to create a better negotiation environment and to show the parties particular points that they seem to agree on (Fisher & Brown, 1988). Mediators focus on joint interests that both parties want to accomplish but also look for those which can be "exchanged" between parties in the process of negotiation.

If agreements are reached by the end of the mediation, the mediators and possibly the parties' lawyers, create a contract agreement which both parties sign and are bound to by law (Goodman, 2005). This contract, if it is approved by the court, has the same power and status as does any contract or judgment made in court (Kovach, 2010). The agreements that are signed by the end of a mediation must be practical and possible to execute. The parties have to

be informed by the mediator about legal consequences of the agreement signed as an effect of the mediation, and know that these agreements are binding (Kovach, 2010). Additionally mediators have to make sure that both the parties are able to understand and follow through on the agreement.

One of the most important attributes of the mediator is being completely unbiased. Being unbiased essentially means that the mediator must not express any opinions about the conflict, blame, or what the different parties “deserve” (Frenkel & Stark, 2008). This can be very difficult since many of the issues that are presented in mediation are in the form of one party blaming the other. Mediators are also not allowed to give individual opinions about wants or requests from the other party. Staying away from expressing opinions means that a mediator generally cannot suggest that a certain request should be made or that a certain want is not acceptable (Goodman, 2005). As stated above, court mandated mediations tend to have slightly different regulations and in these cases mediators may be able to provide suggestions for agreements if the parties are at an impasse and may not reach any solutions (Kovach, 2010). The mediator generally discusses the wants, requests and intentions of each party and helps them discuss possible solutions and agreements with the other party.

Mediators are bound to confidentiality and cannot be called as witnesses in court (Kovach, 2010). This means that mediators cannot reveal any information from the mediation to any party other than those who participated in the mediation. If caucuses are organized during the mediation, mediators may not reveal information from the individual meeting to the other parties present at the mediation (unless authorized by the party to do so) (Coogler, 1978). In some cases, parties may relay information to the mediator that makes one party have

an advantage over the other party (Gmurzynska & Morek, 2014). For example, if a mediation is centered around the ownership of a plot of land, and one individual has found out that the plot of land is located on an oil reserve. If the individual relayed this information to the mediator in confidence, then this information would change the whole balance of the issues and assets of the mediation and give one party an unfair advantage. In this case, if the mediator is uncomfortable with the difference this information causes between the parties, then they can cease the mediation. There are, however, exceptions and the mediator is sometimes required to report any kind of current physical abuse taking place between the parties, particularly if this abuse concerns older people or children (Kovach, 2010). This exemption protects mediators from breaking the role of confidentiality which is a key rule in mediation, but also protects them from allowing for further physical harm to be done.

Mediators usually have no or very little and only very general prior knowledge of the situation or details of the conflict and do not previously know the participants (Kovach, 2003). The mediator comes into the mediation with little information regarding the particular dispute and usually gains information from the statements of the parties (Kovach, 2010). Mediators take notes during mediation but do not record them in any permanent form. Their notes are typically destroyed after a certain amount of time has passed from the conclusion of the mediation (Kovach, 2010).

The Process of Mediation

The mediation starts with an opening statement about how mediation works and what the general rules and stages of mediation will be, as well as what is the role of the mediator

(Goodman, 2005). Usually the mediator underlines some general rules for the mediation such as “do not speak over others” “do not interrupt” and “please be as polite as possible to all individuals present” (Goodman, 2005). These general rules not only help the mediator watch over the process but also allows for the mediator to establish his authority over the mediation process and mediation steps (Robbennolt & Sternlight, 2012). Furthermore, the mediator can then refer to the rules in times of argumentation or high tension levels in order to calm the situation (Robbennolt & Sternlight, 2012). This gives the mediation some structure and regulation but also allows the mediator to give the power of decisions and negotiations to the parties to discuss and work out.

Mediation training is quite different from many other forms of legal training since it is usually very practical. Mediation is not strictly taught in law schools, nor does one have to be a lawyer in order to become a mediator. Mediation training is usually an independent set of classes, or sessions in which individuals are trained in a particular type of mediation (Kovach, 2010). These trainings usually require a certain number of class hours, very often required by law (Kovach, 2003) Additionally, these trainings include a certain amount of participation in mediation as a mediator or co-mediator, as well as some mediation observations (Gmurzynska & Morek, 2014). Each type of mediation training (lessor-tenant, civil, family, divorce etc.) involves different specific requirements in terms of hours and sessions and focuses on different specifics of the particular conflict. Usually mediation training includes effective communication tools, overview of ADR, theory of conflicts, different approaches to barriers of conflicts, types of negotiation, positions and problem solving negotiations, stages and rules of mediation, and of course the role of the mediator (cf. Goodman, 2004; Hill, 1998). Training traditionally involves

the trainees reading materials to familiarize themselves with the history, traditions, and modern practices of mediation (Folger & Bush, 2001; Hill, 1998). The most important part of these mediation trainings is the practical segment in which the students participate in practical exercises on the different approaches to conflict, differences in approaches to various kinds of mediation, as well as mediating in practice mediations while being observed by experienced mediators (Gmurzynska & Morek, 2014; Kovach, 2003; Levansky, 1983). One issue with this training system is that there is not a common or congruent model for mediation training that provides the trainees with all the tools that are available to them for use in mediations. Rather each mediation training is set up slightly differently and includes different exercises, practices, and focuses.

In addition, each state in the USA has different regulations for mediation training and certification (Gmurzynska & Morek, 2014). The lengths and scope of these trainings vary, which makes it impossible to describe a common model for training. The training classes usually involve watching mock mediations as well as participating in mock mediations (Goodman, 2004). Qualified mediators then discuss certain important points and essential aspects to remember when mediating (Hill, 1998). Each type of mediation involves slightly different types of mediation training sessions in which the important aspects of the particular type of mediation are described and discussed in detail. For example, family and divorce mediation training typically involve in-depth discussion about the different types of emotional conflicts that arise (Blades, 1985). These two types of mediations are different than others in the sense that they involve a discussion of parties that are absent to the mediation, such as children, sisters and brothers and even sometimes significant others (Coolger, 1978). Additionally,

mediators in family and divorce mediation use techniques such as venting of emotions as well as discussion of past issues (Blades, 1985). Because of this, mediation training should include practical techniques to show that mediators must act differently towards these types of mediation, as the situations are often much more delicate and involve a more cautious approach to negotiations, since both parties want what is best for themselves, any children involved, and any other family members (Robbennolt & Sternlight, 2012).

Mediators often underline their roles as being “there for the benefit of the parties.” This is also the way that mediators often look into the situations and decide what aspects are important to discuss, as well as what kinds of discussion will lead to more successful negotiations, but they are at the will of the parties, in terms of what steps to take and what to discuss. The mediator underlines his role as being there to help the parties in whatever way possible, but that they cannot make decisions for them (Kovach, 2010). One of the most important features of mediation that mediators must stress is the role of the parties and giving the process of negotiating back to the parties (Fisher & Brown, 1989). The mediator’s main goal is not an agreement in mediation, but primarily in the success of productive conversations (Gmurzynska & Morek, 2014). Therefore the mediator often states that if anyone (any member of any party) feels uncomfortable or is unwilling to continue the mediation, they are free to stop mediating (Goodman, 2004). In private mediations (not court mandated) the party has the right to leave the mediation without resolving their conflict, and may bring the case back to court at a later time if desired (Goodman, 2004). In court mandated mediation, if the parties do not want to continue mediation or do not want to sign the agreement, they are required to return to the court proceedings and their conflict is then decided upon by a judge.

CHAPTER 3--- METHODS

My Research Questions and Focus

My research focuses on looking into the language of mediation, and specifically how mediators use language to adapt to different mediation situations and facilitate the process of mediation. Mediators constantly change and adapt their speech to the different participants, issues, and relationship dynamics that appear in various mediations. In order to be able to adapt well to the different mediation situations presented, the mediator uses a set of language altering tools in order to help the parties in conflict communicate and discuss possible resolutions for the issues presented. In order to look into the specifics of mediator's language, there is a need for a linguistic analysis and insight into the types of language used. This chapter describes my research process in detail, including descriptions of the 12 mediations analyzed for the research. It goes on to describe the linguistic analysis method, Conversational Analysis, which was used to look into the details of mediators' language.

In order to look into the intricate linguistic processes that occur in mediations, research must focus on analyzing the speech that takes place in mediations. In order to look at mediation in this manner, my research focuses on analyzing previously recorded mock mediations. These videos consist of recordings from mediation competitions which were recorded by the American Bar Association (ABA), Harvard Law School, as well as several private and school run mediation and negotiation firms (e.g. Wolters Kluwer, UC Hastings Mediation Competition). Several of the videos come from online mock mediation videos used as examples

for accompanying textbooks, mediations recorded for teaching purposes, and videos made by experienced mediators for the purpose of demonstrating different mediation situations and techniques. These recordings were professionally made and are available to the general public through online links and purchasable DVDs as well as through websites attached to teaching textbooks. These mediations were chosen in order to identify and analyze the techniques that mediators use in order to help better understand the processes of mediation and how mediators use their language to facilitate the process of mediation.

Each chosen mediation was conducted by a different mediator. The topic of the mediation, the kind (business, civil, family) of mediation as well as the participating parties were unknown before watching the mediation. The mediations consist of several different types of videos. One video is a recorded real mediation, completely unscripted, that was recorded with the participants' permission. This video shows a unique mediation style through the development of problems and changes in emotional levels between the parties. The parties have a previous relationship, which influences their decisions and opinions about certain events that occur in the mediation. The remainder of the mediations are run and designed by professional mediators and concentrate on resolving issues and barriers between the parties. The parties and their lawyers are played by experienced mediators as well as lawyers. Each participant is given a different set of facts and information about their position, their beliefs about the issue and about the other parties' actions. The participants create a very realistic mediation following types of mediations that they have experienced. The mediators in these mock mediations have no prior knowledge of the mediation situation or details of the issues, therefore they act in the same way as mediators in real-time mediations.

The mediations were selected to total sixteen (16) hours of recordings and the mediators leading the sessions were not repeated. The mediators for each mediation were completely different and none of the participants/parties of the mediation were repeated. Each mediation was transcribed and then coded for identifiable mediation tools and linguistic features not present in everyday informal conversation. The focus on questions was based on their frequent use across different mediations as well as their similar usages by different mediators. Language features of mediation, such as the social and contextual items manipulated by certain linguistic phenomenon features of mediations, particularly neutrality, inclusion, conversational informality and utterances indicating dynamics of power and authority were coded for in the initial analysis of the mediation transcription.

Many mediations available online put emphasis on the speech of the parties in order to show mediation trainees the types of situations mediators are faced with. Several mediation clips available through internet links, rather than the DVDs used in this research, removed some of the mediation (usually the mediator's speech) to shift the viewer's focus to the mediation situations that the parties create. In order to linguistically analyze the linguistic processes that take place in mediations, the mediator's language must be complete (a full recording of the mediation) and carefully observed. Because of this focus, clips and videos easily available online are not useful when looking at linguistic mediation processes. Furthermore, it could be argued that these types of videos, although good for critical thinking about mediation, should not be the primary types of mediation videos shown to trainees.

Mock Mediation Film Specifics

I transcribed the tapes using my own specific transcription guide. This transcription guide was based on the standard Conversation Analysis transcription symbols taken from *Conversation Analysis: Comparative Perspectives* by Sidnell (2009). A few symbols were added for the necessary points of interest that come up in mediations such as crying and laughing. The arbitrary symbols chosen reflected the types of situations that arise in mediations as well as the expected interactions between the parties and the mediator. The transcription guide used to transcribe is included in Appendix A. The symbols used include coding for features such as loud speech, quiet speech, pausing (long and short), interruptions and hysterical speech. The particular transcription chart features were used in order to anticipate any of the possible linguistic cues (useful to this analysis) that might be found in various mediations.

I transcribed a total of 12 mediations that equaled 16 hours of recordings. These mediations were all on DVDs and were ordered through the publishers or university websites. The transcriptions are not included in the appendix (as they total over 300 pages) but are available for examination upon request. Each mediation was given an anonymous number (1-12) and the names of the parties and mediators were removed from the transcriptions. The mediations are described in order below.

Mediation 1 is led by mediator Stewart Mitchell and focuses on a monetary dispute between a school teacher and one of his students. The student is played as a juvenile. This dispute shows an interesting imbalance in power and authority between the parties. The mediation focuses on resolving a dispute over paying a hospital bill, as well as a formal apology.

This mediation video is 1 hour and 48 minutes long and was received from Clearinghouse Program on Negotiation at Harvard Law School.

Mediation 2 is led by mediator Margaret Shaw and focuses on a dispute between a major business and a former employee who believes he was unjustly fired. The mediation issues center around a payment from the company as well as reemployment at the company. The Mediation recording lasts 1 hours and 28 minutes. The tapes were recorded and published by the Clearinghouse Program for Negotiation at Harvard Law School, and is entitled "Temptation Tempest".

Mediation 3 is led by mediator David Hoffman and focuses on a dispute between two businesses, one truck company and one construction company that produces antifreeze. The companies are in dispute over damage to the trucks following the use of a particular antifreeze. This mediation includes the business's CEO and their representing lawyers. The mediation was also recorded by the Clearinghouse Program for Negotiation at Harvard Law School, and the video is entitled "Mediators at the Work: Breach of Warranty." The tape is 60 minutes long.

Mediation 4 is led by mediator Daniel Bowling and is focused on a dispute between a divorced couple, discussing the education and schedule of their child. This mediation is from the 2008 Mediation Regional Final Competition at the University of California, Hastings. This recording lasts 1 hour and 38 minutes and is produced by the University of California.

Mediation 5 is part of one of the semifinalist rounds from the 2008 Mediation Regional Final Competition at the University of California, Hastings. The mediator leading this mediation

was left anonymous due to competition regulations. The dispute centers around a small business dispute over a breached contract for the delivery of fabrics. The mediation runs 1 hour and 10 minutes.

Mediation 6 is led by mediator Gary Friedman and focuses on an employee firing by a dance company. This mediation is produced by The Center for Mediation and Law. The mediation recording lasts 1 hour and 5 minutes. This mediation includes the parties in dispute as well as their representing lawyers.

Mediation 7 is led by Sharon Press and is the final round from the 1999- 2000 National Advocacy in Mediation competition. The Mediation centers around a dispute between a divorced couple and the ownership of their house and other valuable property. This mediation's length is 60 minutes.

Mediation 8 is from the semifinal rounds of the 1999- 2000 National Advocacy in Mediation competition. The mediator is also left anonymous by the competition and the mediation focuses on a dispute between two neighbors over one damaging the other's property. This particular mediation's length is 1 hour and 16 minutes.

Mediation 9 is an online video that accompanied the mediation book "The Practice of Mediation" By Frenkle and Stark (2012). This mediation is led by Craig Lord and focuses on a dispute between a construction company and an individual who hired the construction company. This is a court mandated mediation. The construction company is represented by the

CEO as well as a representing lawyer, while the other party is representing themselves. The mediation is 60 minutes long.

Mediation 10 is also a video accompanying the mediation book “The Practice of Mediation” By Frenkle and Stark (2012). The mediator for this case is Samuel Rossito, and the case focuses on a personal injury dispute between a real estate company and an individual who was attacked on their property. This mediation lasts for 1 hour and 6 minutes.

Mediation 11 is led by mediator Chuck Dorin and is a real mediation recorded with the permission of the participants (the permission agreement is stated in the mediation recording). This mediation is from the Program for Negotiation at Harvard Law School and lasts for 2 hours. This mediation focuses on a landlord-tenant dispute and does not involve participation by lawyers.

Finally, Mediation 12 is a mediation led by mediator Bruce Patton and focuses on a dispute between a company project founder and one of their workers. This mediation was recorded by the Program for Negotiation at Harvard Law School. The mediation lasts 60 minutes.

The video recordings were transcribed and then linguistically coded and analyzed. The main style of analysis used in this research was Conversation Analysis which focuses on the language for a purpose and an outcome. This focus concentrates on language being used for a specific outcome or purpose in the conversational setting. This means that individuals purposely choose certain types of utterances in order to have some particular effect on the

conversation. The main focus of these analyses was the mediator's language and how it changes to adapt to the changing mediation dynamics. The mediator uses his language to move the process in a certain direction or encourage parties to look at the issues from a different perspective, or to take certain additional aspects in the mediation into consideration. In order to do this, mediators must identify the dynamics, relationships, and underlying broad issues occurring in the mediation and choose to use particular linguistic strategy to change the focus or direction of the conversation. Mediators must make decisions quickly and carefully as mediation is held in real time and moves quickly.

The analysis of the videos centers on the mediator's changes in language as the mediation process moves forward. The reactions that the parties have to the speech of the mediator were looked at in order to look for the cues that mediators use when initiating certain linguistic strategies. The parties' speech and their use of language was not the primary focus of the language analysis. Nonverbal cues were not recorded, even though most of the mediations were transcribed from videotapes and DVDs.

A short quantitative analysis was run on the speech of the mediator in order to look into the prominent types of utterances used by the mediator. This quantitative analysis calculated the percentage of the use of questions by the mediators by simply dividing the total number of questions uttered, by the total number of mediator utterances. This was done for each mediation and then an average was found between all the mediators.

Linguistic Analysis Methods

In order to code and analyze the different types of linguistic-mediation processes used, I first identified each of the important and frequent processes, and defined them according to their purpose as well as general technique. Each of the techniques and specifics that were coded was first identified within the mediation transcriptions and then a definition of how the process works and in what situations mediators apply these situations was defined based on the coding. This information created a general database of information about and examples of the different linguistic features that mediators use while leading their mediations. The linguistic-mediation processes were then analyzed and categorized according to what kinds of linguistic features were altered and what the use of the particular features did to the process of the mediation as well as the facilitation of the mediation conversation.

Another linguistic mediation process that was analyzed was the categorization and uses of different kinds of questions. Within the conversations, mediators often use questions to move parties to the details of a certain argument, look deeper into the parties' wants, investigate their reasoning for certain positions as well as simply clarifying information and opinions. These questions were categorized according to the types of questions and their purpose. These categories included open-ended questions, leading questions (trying to pull out a definitive answer), and closed questions. These were grouped according to the types of questions and were further analyzed according to for what purpose and in what situations the mediators used it. These different categories of questions represent a large portion of the ways in which mediators move parties towards agreement as well as past barriers and impasses.

Several types of analyses were run on the transcribed mediation data. First the interesting, seemingly important, and purposeful linguistic features were coded in all the mediations. I focused on finding characteristics and features that stood out from language typically used in informal conversation settings, as well as language that was different from trial language. Certain linguistic features, such as the use of the inclusive we and mediator self-reference, indicate the mediator's emphasis on the particular mediation process and the uniqueness of the mediation process. These features were looked at across the mediations and their usages as well as placement were analyzed by looking into the effect demonstrated by their usage. Once these initial language details were analyzed, I looked into the larger sentence structure features that occurred across the mediations and were used in similar ways by different mediators. These were analyzed in depth and created a focus on the use of questions and different question categories by the mediator. The effects of these questions were analyzed using analysis traditions of Conversation Analysis, various features within pragmatic linguistics, and Speech Act theory.

Since mediation cases and the participants in each mediation vary considerably, no focus was placed on the demographics of the parties and mediator. Different linguistic analysis styles such as Discourse Analysis focus on the characteristics of each speaker and how their origin and gender may affect their speech (Sidnell & Stiver, 2013). Conversation Analysis (CA) takes this kind of information into consideration when analyzing, but does not focus on these differences (Sidnell, 2009). The analyses of the mediations focus on the interactions and changes in interactions between the mediators and the parties. The mediator's language is the focus of this study. The ways in which parties react is very relevant for looking into the changes

that the mediator makes when they observe the ways in which the parties react to their speech as well as the other party.

CA looks into the interactions and responses for particular effects and goals in the situation as well as the role of the mediator (Sidnell, 2009). These kinds of interactions are often referred to as goal oriented and concentrate on causing a particular change in the situation or thinking of the individuals in the conversation. Mediators' goals are to facilitate conversation, to identify the true wants and interests between the two parties, and to help the parties communicate efficiently. They do not focus on any type of resolution or agreement goals, but rather are focused on facilitating a conversation between the parties and helping the parties in any way that is possible (Goodman, 2005). CA focuses on natural creation of language, language as goal oriented, and other linguistic features in natural, unscripted language.

CA is a style of linguistic analysis that focuses on the social and practical use of language (Sidnell & Stivers, 2013). Rather than looking into the specifics of the structures and how the different structure can change the language conveyed, CA looks into how language is used productively, socially, and how language can be used for goal-oriented purposes (Sidnell, 2009). This can be very important to the analysis of certain language situations, especially conversational negotiation. This type of analysis focuses strongly on the products of certain language uses. That is to say, it takes into consideration the purpose behind certain phrases and other language, not just what is said, but what is meant, how it is used, and what effect the language has (Sidnell, 2009). CA often also focuses on how and why speakers choose their word and sentence structures (Sidnell & Stivers, 2013). This type of analysis allows linguists to look

into why speakers make certain word choices in different linguistic environments or events (Sidnell & Stivers, 2013). CA is widely used to look at natural production of language as well as certain structured settings such as trials and mediations (Sidnell, 2009). Since mediation is very conversation and goal focused, conversation analysis is a good way of getting an insight into the different language choices that mediators make.

One feature of CA that is particularly interesting when looking into the language of mediation is the concept of speaker-listener “active involvement” including purposeful performance phrases (Sidnell, 2009). These performance phrases include items such as requests, offers, and assessments, which generally need to be accepted or declined by the listeners in the situation (Sidnell & Stivers, 2013). These kinds of utterances can show clear instances of constant analysis and understanding between the speakers during the duration of the conversation (Sidnell & Stivers, 2013). CA often looks at how speakers and listeners show comprehension of the statements uttered and show their understanding of the current focus and positions of the conversation (Sidnell, 2009). That is to say, when a request or offer is made, if the listener is understanding the process and continuing organization of the conversation, they will make an appropriate acceptance or refusal of the previous utterance (Miller, 2006). In certain situations, silence is also an appropriate response, but in situations that involve an individual being asked a question that requests a confirmation or refusal, it is not appropriate to respond with silence (Miller, 2006). This is an important concept when looking into the language of mediation since mediators often need to make sure that all parties are understanding the negotiations fully and are following the conversation. Mediators can use certain techniques to help parties follow the negotiations as well as to make sure that all

utterances are being understood by the participants. CA looks at how participants of a conversation demonstrate their active listening and understanding of the conversation (Sidnell & Stivers, 2013).

CHAPTER 4--- ANALYSIS

INTERRELATION OF MEDIATION AND LANGUAGE

In this study I focused on how mediators used different kinds of language features as well as how they changed their language in order to facilitate a productive conversation between the parties in conflict. I asked the main questions of “what kinds of tools do mediators use to facilitate the mediation” in order to look into the linguistics features. I found that questions are a prominent feature in the language used by mediators, and that there are four main question categories that mediators use in specific mediation situations for specific effects in the mediations. These question categories are adaptable to a variety of different kinds of mediations as well as dynamics between the parties in conflict and should be included in mediation training books. In fact, these question categories make up over half of the utterances of the mediators’ speech and should be taught in mediation training in order to give mediators more linguistic tools for their adaptation to mediation.

In mediation training there are several different “mediation techniques” that new mediators are taught to use in order to facilitate a productive conversation. Unfortunately, these techniques are not well defined in mediation training manuals and there are often significant differences between the different definitions of the principal techniques. Additionally, many of the main techniques are left unidentified, unexplained, and only examples of how experienced mediators respond to particular situations are given to the mediation trainees. These examples include stories (not full explanations - just very small examples from past mediations) from experienced mediators and videos of mock mediations

highlighting the various situations that can occur in different mediations. Together, these two sources present the trainees with a look into how mediations are generally led. But each mediator differs, each has their own individual style, and different mediation cases require very different approaches from the mediator. These various videos and recollections of experience provide a very limited amount of preparation and information for the mediation trainees.

Although experience is often the most helpful strategy to learn a skill well, there needs to be some kind of congruency and more detailed and inclusive definitions between the different mediation trainings and mediation training manuals. Because of their focus on learning through showing example videos of mediation, the techniques described as well as the definitions used to describe them tend to differ between various manuals and descriptions of mediation strategies. That is to say that mediation manuals are in need of definitions and descriptions based on what mediators actually do in mediation and include a large basis for the various techniques available to the mediator. My research and analysis identifies categories and describes particular mediation techniques the mediators use in mediations.

There is a strong need for the identification of what exactly happens in these different mediations and what similarities mediators present in terms of their mediation strategies. Since mediation is a conversation with a pre-determined goal and destination, there are several strategies that mediators apply and use in order to reach certain goals in the mediation or at least start a dialogue between the parties in conflict. The idea and focus of mediation entails the importance of mediation as a way of getting all the facts, wants, and needs of the parties on the table. This kind of information, fact, and want sharing, although usually not easy to do, can change the dynamic between the parties greatly. Simply understanding the issues at hand as

well as the facts versus the wants and opinions can help change the parties' views and attitudes towards the issues at hand and in general towards the other party.

A mediator's role in mediation is often described as making all the aspects of the mediation and party relationship transparent. This can entail looking into several different nooks and crannies of the issues and relationships and figuring out what the main issues are and what dynamics are keeping the parties from conversing very well and getting to the details of those issues. This role for the mediator is extremely important in the process of mediation. I found that mediators largely use questions in order to make the issues and dynamics more visible to other parties. The questions function in many ways and are applied to a variety of different situations according to how the mediation is proceeding. Because of the quickly changing nature of mediation dynamics that go into resolving issues, mediators must constantly adjust their speech strategies in order to actually help with conversation. Questions allow for the mediator to not only investigate the details of all the essential areas of the mediation, but also to make sure that they give the parties the opportunity to express their wants for the issues to be discussed, as well as the arguments that are made in the mediation process. Questions allow the mediator to retain control over the mediation process as a whole by consistently directing the conversation in certain ways, but also allow the individuals to express their thoughts on the situations and statements.

Open-ended and Closed Questions

A mediator's primary focus is to facilitate a productive conversation between the parties in conflict. This conversation can go a variety of ways and has very important and changing dynamics. But how do mediators simply use language to help the individuals work their issues out?

From the mediations that were transcribed, questions are a prominent linguistic technique used by mediators in order to move parties towards a mutual understanding of the issues at hand. At the initial level, mediators use open-ended questions and closed questions in different situations in order to gather different kinds of information from the parties. Gathering information is an important stage of mediation because it allows for further resolutions. This information gives the mediators a full picture of the situation and also gives a chance for the parties to exchange information so that they better understand the viewpoints as well as interests and goals of the other parties.

My research has shown that open-ended questions, often used at the beginning of the mediation, are used to open up the discussion to new details and more general information about the topic of discussion. Open-ended questions serve as an invitation for the parties to talk so that they can share what is important and relevant to them. Additionally, these questions used in the later stages of mediation tend to provoke the parties to answer with creative and insightful ideas. These open-ended questions bring up answers that provide reasoning and explanations behind certain positions, and reasoning for certain feelings and requests. Mediators use these questions to gain a better understanding of all the facts, events,

and dynamics involved in the issue being mediated. As previously discussed, one large advantage of mediation is the ability for individuals to discuss and work through all kinds of issues and not only legal ones. The use of certain open-ended questions lead mediators to a better understanding of the issues that need to be resolved as well as helping all parties present understand the depth of the issue, and the other side's stance on the issues.

Excerpt: Mediation 3

Party 1: So let's say, you know, we're talking about \$600,000-750,000 certainly doubled, maybe tripled, you are talking in excess of \$1.5 million and then on top of that, of course, attorney's fees are available and I would estimate in a case like this, that's going to be a sizeable sum. And of course, the Cane Company will be paying its own lawyers. So we're willing to be reasonable, but we also believe that this is a significant case. I believe in the case. I will take it all the way. You can check with your colleagues. I am a hard fighter and I think if we can settle it great, if not see you in court.

Mediator: Okay thanks. *I would just ask you, [Party 2], do you have anything you want to add at this point? To let us keep in mind as we go about our conversation today?*

Following Party 1's initial statement, the mediator asks the other party a very general question about the legal issues in this situation. They emphasize the opportunity for Party 2, to express anything on their mind, or that they want to express before conversations on the particular legal issues begin. The mediator underlines the "open" opportunity to Party 2, by emphasizing that the statement can be referring to anything that they feel is vital to the continuation of the conversation as well as their stance in the mediation. The data show that this is a common use of open questions by mediators in conversations and that they tend to encourage any kinds of statement from the parties at the beginning of the mediation and then gradually move to closed questions and other specific types of question that emphasize particular aspects of the issues and conversation being held.

On the other hand, closed questions are used much more directly and deliberately by the mediator. These closed questions focus on one word response answers, largely focusing on Yes/No questions rather than expanded explanations and reasonings. These closed questions can be used simply for a better clarification of something that was said, or they can also be used in order to sharply focus on one aspect of the conversation. Mediators tend to concentrate on certain points of statements and arguments made by the parties by emphasizing them in their questions. This can help the parties focus in on areas of agreement between the parties as well as certain details that would need to be discussed. The closed questions are often used more towards the end of discussions on a topic, because they gather the details and answer the intricacies of the slowly forming agreements or at least certain points of agreement.

Excerpt: Mediation 10

Party 1: That is what it would look like. I want a safe environment for our children. I want to make sure...

Mediator: I understand that, but the physical...I am understanding that there's something in terms of all three children, but what I'm not sure about is are you suggesting that over the summer as was proposed *that you don't want all three children with you?*

Party 1: Yes. We want all three children because I have my grandparents there and there's more things that I can interact with my grandparents when we are in Cancun, it's going to be fantastic.

Mediator: So from June 15 to September 15? Okay so it's less than three months...

The first, italicized question made by the mediator is a closed question and asks about specific details referring to the statement just made by the party. The mediator is attempting to get clarification of the exact interests of the party referring to the discussion about the children.

After the party's explanation answer to the closed questions, the mediator follows with another closed question, again making sure that each detail of the party's request is understood.

Division of Questions

My research into the language of mediators showed that questions are the most prominent form of language used in the speech of mediators. Within all the mediations transcribed, questions make up about 53 percent of the utterances of the mediators. The following pages describe the types of questions that I found in my analysis of 16 hours of mediations that included 12 different mediations and 12 different mediators. The terms and their definitions used for classification of these questions are of my own creation (except for reality testing) and although some can be found in other writing, in this paper they are used according to my definitions. The categorization of the questions was based on the outcome and intention of the questions asked. In other words, the response of the party was looked at in order to identify the effects the mediator's question had on the conversation. The mediator's intention was also a large focus, as the way in which the questions were worded or introduced gave insight into the intended purpose of the questions. These analyses were based on the uses of linguistic descriptions of speech act and question in conversation, and were categorized based on the intended affect that they had on the mediation. After their opening statement and explanation of the process of mediation as well as the steps and the mediator's personal rules for the mediation, the mediator focuses on using questions in order to gain information about the legal issues, relationships between the parties, and eventually to stimulate the parties into thinking about possible solutions to the issues and differences between the parties. These definitions and examples from the transcribed mediations are as follows.

Clarification Questions

Clarification questions tend to ask about details of the statements of the parties. They inquire into what is actually being said by the individual and clarifying the information for the mediator as well as the other party. These are used just for conversation productivity, in order to keep an exchange of information and full encapsulation of the information relevant to the issues. Clarification questions act as a basic type of question in mediation in order to simply request information and facts about the case and background of the issues. Unlike many of the other types of questions used, there seems to be no major alternative effect to the mediator's asking these kinds of questions, but simply an increase in the information shared. In this case "basic question" as well as "no alternative effect" refer to the use of questions as simply a form of requesting information as opposed to questions that involve some kinds of speech act associated action. These clarification questions are specifically categorized as not having any underlying intentions of communication such as encouraging a specific direction for the conversation or suggesting the parties to take certain actions. Clarification questions are based on the mediator's need for detailed information about the events surrounding and causing the legal issues, as well as all the details of the legal issues up for negotiation.

Clarification questions are used by all the mediators in the transcribed mediations. They are generally used when a party is just at the beginning of their explanation of the events or statement of their wants. These questions do not look deeply into the conversation but rather are used for basic information and generally the establishment of facts, opinions, positions and

wants. Parties tend to answer these kinds of questions without much thought or change in their speaking manner, and speak directly towards the information being requested. Clarification questions tend to be used more towards the beginning of mediations. Mediators get more and more specific and purposeful the deeper and more detailed the conversation becomes and because of this, these clarification questions tend to only serve a purpose at the initial stages of the mediation conversation.

Excerpt: Mediation 7

Party 1: This humiliation in class when I supposedly humiliated her when the exams were handed back. In no way did I intend to or did I attempt to humiliate her. [Party 2] is one of the outstanding students in the class. There's no question about it. She failed the examination. I made some reference to the fact as I was distributing the examinations that I expected that she would do better; I expected better of her. I did not intend any type of humiliation, nor did I think she was humiliated in class. It is surprising to me to see her fail an exam.

Party 2: Doesn't that sound like a slap on the hand?

Mediator: One of the things that would be helpful I think [party 2], if we could begin to get some discussion between the two of you because after all, you're going to try and come up with a resolution. *It sounds as if, [Party 1], you're suggesting that you didn't sense that what you said was meant to be a humiliation?*

This example shows how the mediator is in a way summarizing the previous statement made by the party and clarifying what he said or meant by what he said. The mediator tends to critically listen to the statements made by the participants and then restates the most important information from the statements. Since the mediator then tends to summarize these most important points, there is a need for a clarification question that makes sure that the information being restated is accurate and represents the party's feelings.

Further Proposal Question

Mediators also use questions for purposes other than simply getting information.

Further proposal questions are used by mediators to help parties think about possible agreement points and realistic wants for the current position in the mediation. Mediators ask further proposal questions in order to guide the thinking of the parties towards solutions to an individual's problems. Mediators may ask questions such as "so what do you want to get out of this mediation" in order to get a general idea of what the focus for the parties is. Verbalization of these wants and wishes can help individuals look more towards solutions rather than continuing back and forth argumentation and discussion without any steps towards resolution. These questions help the individuals in the mediation all get on the same wavelength and truly look at what can be productively done in order to resolve some issues. These kinds of questions are generally used after most of the information about a certain issue has been discussed. Mediators tend to use these to change the focus of the discussion away from simply sharing information and opinions, to looking at what can be done in terms of a resolution. Without knowing what the individuals' true interests are from the different situations, the mediator would not have as good of an idea of which way to direct the mediation. With this information, the mediator can then work towards finding similarities and agreement points between the parties in order to work towards a common solution.

Excerpt: Mediation 9

Lawyer Party 2: [Mediator], I'm sorry, that's insulting, that offer. That's absurd.

Mediator: *What do you think would help them see that they have more exposure here than that offer suggests?*

The excerpt above shows how the mediator asks the party for their suggestions of further actions. Not only does this provide the mediator with some idea of the direction in which the party is leaning or wants the mediation to go towards, but also gives the mediator some insight into what the party does not accept about the current proposal. The mediator asks the party for their thoughts on what an acceptable next course of action should be and leads the party to think about their true interests as well as the practicality of their interests in reference to the other party and the current standing of the negotiation.

As stated, further proposal questions have been found to be used after most of the information on certain issues has been discussed either with all the parties or with just the mediator. It seems that mediators also tend to ask these further proposal questions in order to stimulate the parties to rethink their wants and expectations from the mediation and from the other party. Mediations usually start with opening statements from each party, which frequently include information from the party about their general wants from the other party or the resolution of the issues. The presentation of facts and background information allow the parties to see both sides of the issues, as well as problems surrounding conflicts and the dynamics of the conversation. After all this information is shared and the issues are defined, the mediators present these further proposal questions in order to let the parties have the opportunity of rethinking their wants and expectation according to the information already presented in the mediation. The use of these questions can then be used as a starting point for discussion of agreements and negotiation of wants between the parties. Mediators strategically use these questions in order to change the dynamic of the mediation away from information sharing, and towards a give-and-take negotiation style.

Excerpt: Mediation 5 (discussing the details of the money owed by one party to the other party)

Party 1- so that would take approximately 30 months, roughly. So (6) so that gonna take, about three years.

Mediator- and help me understand, *is there any other option that you can think of that would work for you but also work for them in trying to help everyone try to meet their?*

Party 1- I can't cut their rent down. I haven't raised their rent since the day they moved in, I've been very lenient. I mean everyone I know goes up 5 percent 8 percent. A lot of people that in know that rent let everything raise. And I've never raised the rent, well not that I can remember.

This passage shows another use of further proposal questions in which the mediator is trying to stimulate the creative and practical thinking of the party. The mediator is emphasizing the practicality of an agreement for both sides and is asking Party 1 how far they are willing to modify on their wants and interests. This question is being used both as a reminder of the situation that both parties are in and as a way of looking at the limitation set by the parties themselves. From this question, the mediator is able to better judge what types of solutions may be amicable to agreement between the parties.

Agreement Questions

The next types of questions that mediators tend to use are agreement questions. These questions act very differently than the other types of questions typically used, and are not usually meant to be answered in any specific way, but rather are intended to stimulate agreement points in the mediation and establish progress along the linear progression of mediation. If mediation is thought of as a line, with a start and an end, these questions create closure points on this line that are intended to push the mediation forward. These closure points are intended to be a conclusion to certain aspects discussed in the mediation. Once a

topic or issue is discussed and both parties are on the same page about either the way the issue is being resolved, or what truly happened in a certain situation, the mediator will ask this kind of “agreement” question, in order to indicate that the issue agreed upon is now closed and will not be discussed further.

Agreement questions tend to be used at the end of individual group conversations. They can also be used in caucus, when the mediator is discussing an issue with each individual party and they conclude a certain view or course of action for the rest of the mediation regarding this point. Parties are expected to affirm these questions, and if there is an issue they fail to agree. These questions are very important in all situations as they set the plans for what has been discussed or dealt with what still needs to be included in the conversation. In joint sessions, agreement questions are geared towards both the parties equally. Mediators must be aware to retain their neutrality when asking agreement questions. If one side is asked for their agreement but the other is not included (either by looking, directing speech, or saying their name) then the mediator runs the risk of showing a bias towards one side. Agreement questions are not only essential for a productive movement of the mediation conversation, but also for the retained neutrality of the mediator.

Excerpt: Mediation 8

Mediator- yeah so let's for the sake of discussion call it 3300 dollars I mean with repairs of the work itself not time delay and all that that the uh ya know to me that's the cost that you're going to insure to um (2) uh (1) to try to get somebody new in there to complete the work. *Are we in agreement about that?*

Party 1- correct yes okay.

This excerpt shows a straight forward use of an agreement question by the mediator. This passage appears after a long negotiation between the parties, facilitated by the mediator, about the specifics of a possible agreement. Here the mediator is using the question in order to underline the specifics agreed upon by the two parties. In this case the agreement question is very straight forward but, as the next examples show some agreement questions are not as straight forward but have the same effect. This question puts everyone on the same page and allows the negotiations to move forward and towards a practical agreement.

As stated by their use, agreement questions are generally posed towards the ends of conversations on a particular topic or issues presented. Not only do these questions produce a place of agreement and movement forward past the issue already discussed, but they also indicate a change in setting the stage for agreement. These agreement questions are used by the mediator to indicate a turning point in the mediation, often involved with a change in speakers, or change in caucus/joint session, or even more importantly, a change in negotiation topics. Following these questions, there is usually an initiation of the discussion of another, possibly related and possibly unrelated, point of argumentation. This next step (if early in the process) tends to start again with more open-ended questions focusing on the details of the issue and moving towards the wants of the parties from the issue presented. Towards the end of mediations, these agreement questions become more frequent but usually focus on the agreement point purpose of the question, setting barriers for agreement and movement forward. The more fruitful negotiation in a mediation, the more agreement questions are asked in order to make sure all the parties are on the same page.

Excerpt: Mediation 2

Mediator: Okay. It seems as if there are some places that I could take back to the table if you would agree to let me do that. *Basically what I hear you saying is that you're not going to deal with changing the grade at this point?*

Party 1: No.

Mediator: That exam was fair as far as you're concerned. You would be willing to express an apology for any humiliation you may have caused if that's how she felt. The repayment *of the \$75; you want the money but you don't care if we could spread it out over time that would be okay?*

This excerpt shows two examples of agreement questions in which the mediator is clarifying the exact position of Party 1. In this case the mediator is underlining and defining the boundaries that Party 1 is agreeing to. This helps the mediator understand what kinds of agreements are possible between the two parties. The mediator is helping Party 1 also look at more practical and creative options for the resolution of the issues by underlining that the parties' previous statement of their willingness to receive their payment over time rather than all at once. This gives the mediator more flexibility for helping the two parties negotiate a mutually agreed upon solution.

Neutrality Questions

Mediators not only use questions to retrieve information or establish agreement points, but they also use them in order to retain their own neutrality. This is to say that mediators sometimes use neutrality questions, in order to keep both parties in an unbiased view as well as on the same level with the mediator. These neutrality questions can be very different depending on the situation and even more so depending on the dynamics of the mediation. Some can be as simple as "and how do you feel about what Bob said," in order to give both parties a chance to express their opinions about a certain topic that could be newly presented

or viewed as very essential. Some more in-depth “neutrality” questions focus on such insight as “and what is your view about the proposed solution?” These different kinds of questioning generally have the same effect of making the parties feel not only included in the process, but equally included in the process. This is important because it goes back to the idea of how mediators tend to define neutrality. Following the definition for “equidistance” this shows ways that the mediator keeps this “equidistance” through including both sides in the conversation at hand rather than only asking for one party’s input on the topic. This not only keeps the neutrality of the mediator safe, but also includes both of the parties in all topics discussed.

The following very short excerpt shows how the mediator is reinforcing the neutrality of the parties by asking them both the same questions. The mediator is giving both parties an equal opportunity for discussion on the specific issue and in this way is retaining not only the mediator’s neutrality but also the emphasis of equal opportunity and equal power balance between the parties themselves.

Excerpt: Mediation 11

Mediator- okay well let me ask you the same question as I asked [Party 1]. If, what are you looking for from this mediation?

Equality, Neutrality and the Linguistics of Mediation

In conversational settings, questions can be used to encourage individuals to express their opinions about the issues and topics being discussed. This typical way of interpretation can encourage the parties to speak more openly and broadly in order to respond to the

questions and requests for information. Using questions can also encourage the parties to engage more in the conversation, as they are usually directed at a certain individual. Mediators can also use questions to emphasize the importance of the parties making the decision and not the mediator. Unlike in litigation processes, the mediator is not asking about what exactly happened and whose fault it was, but rather asks about the parties' reasons for certain wants, or even how the party has been affected by the situation. This can help parties to look differently at the situation and at another party, as well as feel more comfortable and open about the important issues.

Informality and equalizing authority levels

Mediators typically try to use characteristics typical of informal conversations. Mediators often state that the process is informal at the start of the mediation and often even ask to refer to parties by their first name. In the mediations that I analyzed, each mediator requested the participants to converse on a first name basis and made a statement about the overall informality of the process. This example in Mediation 1 (Are there any questions about the role of the Center for Dispute Settlement, the role of me as a mediator, the caucus process, *the procedure that we're going to follow, which is very informal, very relaxed*) show the mediator's emphasis on the informality of the process. Here the mediator emphasized the informality of the process at the end of his opening statement. The mediators of course employ this informality in order to make a more comfortable environment for the parties and a better environment for productive conversation. In these informal settings, the mediators can make better use of questions in the mediation. With all the extra specification of the mediation conversation, formality is just a linguistic feature that could distract from the purpose of the

mediation. The informality also puts all individuals on a more equal level of authority and power. The mediators hold obvious authority over the process of mediation as well as questioning the details of the situation, but use of first names as well as other characteristics of informal conversation such as appropriate humor, small talk, informal language (avoiding legal jargon), helps equal out the possible power imbalance between the two parties (Gmurzynska & Morek, 2014). In the mediation room, all individuals in the parties participating (excluding the mediator) have the same power and the same rights over the situation and informality may, in a positive way, influence the equality and productivity between the parties. If one individual feels over-powered by the other, or scared of their authority over them, conversation becomes much less productive and makes the transparent issues become much more difficult. Power differences can be very important in many cases such as: tenant-lessor, academic disputes between students and teachers, or family disputes where often one of the parties is more dominant in the relationship. This can also be seen in cases such as Mediation 1 in which there is a power imbalance of authority already present between the parties. In this case the parties consist of a student and her high school teacher. If such imbalance exists, the mediator may use first names to balance their typical authority relationships outside of mediation. In this way the mediator is making sure that the two parties start out feeling equally important in the mediation and with equal rights and power within the negotiation process.

Neutrality

Mediators aim to set up an informal, comfortable setting for the mediation and help facilitate a productive discussion between the parties. In all mediations, mediators must retain neutrality. The definition of neutrality is arguable in the mediation area but many mediators

describe it as either being “unbiased” or not showing bias, or being equally attentive to all parties. This retention of neutrality goes back to the original reference of mediators as “qualified neutrals.” Their goal of being neutral to the situation and discussion at hand can be shown in many ways and is presented in several ways by the mediator. Being neutral is one of the most important features of mediation and being a mediator, since through neutrality they build confidence and trust in the parties to the process of mediation as well as to the mediator (Kovach, 2003). Giving an opinion about someone’s situation, telling the parties who is wrong and who is right, or evaluating the parties’ positions may compromise the neutrality of the mediation (Gmurzynska & Morek, 2014). My research showed that mediators avoid any kind of language that shows a bias towards one party or one position in the dispute. This lack of bias wording underlines the emphasis mediators put on keeping their language neutral, equal to both parties and empty of their own opinions about the positions of the parties.

Mediator Self-Reference

Along with the use of certain expressions as more neutral ways of connecting and discussing with these parties, mediators tend to focus on referring the blame or emphasis onto themselves. As the data reveals, mediators tend to emphasize their roles in order to retain neutrality between themselves and the parties and also to decrease tension between parties. Mediators use expressions such as “help me with understanding this...”, “as I understand it...” or even “what I am hearing” in order to get more details about certain topics as well as to show the parties that they are actively listening (Frenkel & Stark, 2008). An example of this type of usages is shown below.

Excerpt Mediation 5

Party 2: He was giving back the tests and there was complete silence naturally. Everyone was waiting to find out what kind of grades they got and when he handed mine back to me, I saw that there was a failing mark and as he handed it back, he said loudly I “expected better of you Roxanne.” I felt like screaming well I expected the test to be a little more fair.

Mediator: *So as I understand it, the problem was that the test that you studied for or the material you studied was not what was on the test.*

These tools in particular are used in a variety of mediations. In my research self-reference phrases were used by all but one mediator and were generally followed by a summarization of the previous statements made, or by a very general request for information about some detail of the statements just made. In this case the mediator is using this phrase as an introduction for clarification of the facts or clarification of particular details of one of the party’s statements.

From another perspective, if one party seems not to understand a certain aspect of any statement made by the other party, my analysis shows that the mediator tends to use a statement along the lines of “let me see if I understand correctly”, and then gives a summary or restatement of the statements previously made. In this way, mediators are redirecting any negative reactions to the further explanation or questioning onto themselves, while also retaining a certain distance (neutrality) and understanding between themselves and the parties. In this case the mediator is acting in his role as a medium of communication between the parties. These neutralized, self-referencing phrases can help extract additional information as well as clarification of certain points in the parties’ statements.

Excerpt Mediation 1 A

Mediator: *Can I just try and summarize where we are at right now? As I understand it, you would like an apology from [Party 2] for the pie-o-gram and a \$75 reimbursement?*

Party 1: That's correct.

Mediator: For your out-of-pocket expenses. [Party 2], you need to deal with your grades and the exam you failed and the commitment you made to the class and those kinds of things. Is there anything else that you would want?

Furthermore, my analysis of the various transcribed mediations shows that mediators use self-reference statements in order to clarify and emphasize the information stated. Excerpt Mediation 1 B shows how the mediator not only uses the introduction of “as I understand it” as a self-reference statement, but also alerts Party 1 to the fact that the statement that follows will be a summary. Examples such as the one above is shown in several of the mediations, including Mediations 3,5,6,7,9,10, and 12, using statements such as “let me see if I understand correctly...” and then presenting a summary, restatement, or rephrasing of the main details of the statements can show the parties the focus points of the statements made. Not only does this clarify the information presented, but also emphasizes certain aspects. Here mediators use restating (a common mediation technique that involves repeating what was said with a different focus and emphasis to present a different view of the statement), and summarizing to emphasize certain parts of the previous statements. The italicized phrase shows the mediator’s use of a self-referencing phrase as an introduction to a clarification question, and brings out the main and most important and essential (to the mediation) statement of Party 2’s previous recollection of events. This emphasis can often encourage the parties to focus on particular aspects or rethink their understanding of the statement possibly into a more neutral or

understandable point/argument. This technique can also redirect the focus of the conversation and help move the negotiations along.

Excerpt: Mediation 1 B

Mediator: And how did that happen? I don't quite understand where that happened.

Party 2: He was giving back the tests and there was complete silence naturally.

Everyone was waiting to find out what kind of grades they got and when he handed mine back to me, I saw that there was a failing mark and as he handed it back, he said loudly I expected better of you Roxanne. I felt like screaming well I expected the test to be a little more fair.

Mediator: *So as I understand it*, the problem was that the test that you studied for or the material you studied was not what was on the test?

Party 2: Right.

Inclusive We

In my analysis, the mediators who conducted the transcribed mediations had a common trend of using the pronoun “we” whenever speaking about the general mediation process as well as when setting up topics for discussion and steps to take. The mediators tend to heavily use the pronoun “we” reference when giving their opening statement and especially when discussing the process of mediation as well as the roles of the mediator. They often use the pronoun “we” to emphasize the idea of an involved conversation and underline the role of mediators who play an important part in this conversation. Mediators include themselves in all the conversations which take place and in discussing and understanding issues that are brought up.

Excerpt: Mediation 3

Mediator: What I hear you saying, [Party 1], is that you're concerned with [son] getting a lot of repetition. You want the repetition to be regular. You... he has... this is an area where he's most... has most challenges.

Party 1: Right.

Mediator: So, *we've got this difference in perspective* right here, and *this takes us back to the issue* that [Party 2] raised, so how do you resolve this?

Party 2: You know, I think one of the principles that is constraining what we do is effectiveness, and you know, frankly there is a concern that more is not always better.

In this excerpt, the italicized phrases indicated the mediators use of the "inclusive we" to underline the inclusiveness of all parties and the emphasis of the conversation being held between both parties as well as the mediator being actively involved. The mediator then ends his statement with a question directed at what actions the parties want to take next in the conversation. This set up gives the parties not only a sense of all the individuals in the conversation working together, but also keep the parties focused on their authority over agreements and actual solutions to the particular problems presented in the mediation. Using the pronoun "we" may also underline and make parties understand that the problem to be solved is a joint problem between the parties, and that they need to approach it together rather than arguing their sides.

A common phrase uttered by the mediators when a new issue is brought up by one of the parties is "we can discuss this later, but let's focus on the present issue for right now." The mediator indicates that both parties need to focus on present issues, usually connected directly to solving the problems, instead of exchanging generally unproductive information and constantly going back to their past. However, the mediator also indicates to the parties that they may come back to the discussion, if it is important to them, at a later time, so as not to end progress on the current conversation. This places the mediator in a more neutral and equal

level with the parties, in order to encourage productive conversations between them. The mediator also emphasizes that the parties may speak to the mediator directly, rather than the other party (which can be a problem in tense mediations). This also helps mediators emphasize their own role in the mediation and serves as a reminder that the mediator is present to help facilitate the conversation as well as work through the issues together with both parties. By using the pronoun “we” in examples such as those shown above (e.g. “we will talk about that later”) the mediator are also using their authority over the process in order to encourage the conversation to move in a particular direction or focus on a particular issue of discussion. It seems that mediators often use the all-inclusive “we”, in order to neutralize their authority and high status in the process of mediation through emphasizing the inclusiveness of all parties and group-setting of the mediation.

Reinforcing the Process of Mediation

It is quite common in mediation that mediators mention benefits of the process e.g. “remember an advantage of mediation is your ability to discuss all issues and not just the legal ones” or “take in mind this is your opportunity to resolve all the issues broadly and in amicable ways” (Frenkel & Stark, 2008). This kind of reminder can help parties to stay on track and stay attuned to the conversation and the proceedings of the conversation, when they are possibly departing from the main goal of the mediation. The mediator helps the parties focus on the major issues and the goal at hand, rather than letting them speak about a matter or aspect of a situation that is not productive or relevant to solving their problems. The mediator also uses this kind of reminder when the parties get overly emotional or argumentative rather than focusing on the issues and a productive conversation to resolve the issues. Furthermore, such

references can help move the conversation along when a party has a reserved approach to the process and is not engaging in negotiation. That is to say, certain individuals tend to approach mediation skeptically and do not engage as much as is usually needed for a meaningful and productive mediation process and outcomes. In order to help the parties to overcome those obstacles, the mediator reiterates the advantages of mediation as well as the opportunities that mediation gives to the parties in mediation. Mediators commonly start the mediation session with opening statements that, as shown by the analysis, underline the advantages of mediation as compared to litigation as well as what advantages participating in mediation can provide for the parties.

Excerpt: Mediation 4

Mediator: Mediation is an informal process that is actually quite different from court or an arbitration or indeed what might happen with a settlement conference with a judge. I'm not here as a decision maker. That's one of the first differences, but in addition to that, we really have an opportunity today to *take a different approach to this case* than might be taken by an arbitrator or a judge and that is that it seems that what might be helpful here is *if I can help you understand and think through what some of the obstacles have been to getting this case resolved on your own. And also to think through some of the things that might be important to you as you think about how to get this matter behind you and get on with your business and with your life.* So it really is a matter of exploring some of those concerns that you have, some of the alternatives that you face and seeing *if together we can come up with some way of resolving this that will meet your needs here.*

In this excerpt in particular, the mediator explains their own role and how the participation of a mediator can help the parties move through certain barriers that appear in most conflicts. One of the purposes of this explanation is to make it clear to the parties that the

mediator does not make decisions for them. This statement differentiates mediation from other formal proceedings, underlining the importance of involvement of the parties into the process. The mediator emphasizes the possibility of looking into several creative solutions that may address the real needs of the parties. My research shows that the explanations of the advantages of mediation tend to emphasize the possibilities that are not available in other kinds of legal processes and parties need to consider mediation as a real opportunity and chance for a different kind of dispute resolution. The mediator again emphasizes on the dialogue of the process by comparing mediation to conversation with the help of the mediator. The mediator also tried to explain that this method of dispute resolution includes all individuals taking place in the mediation.

On the other hand, when mediators re-emphasize the advantages available in mediations, they tend to focus on what the participants can do and how they can influence their own future, that is not usually accepted and possible in other legal processes. The excerpt below shows how the mediator urges the party to discuss all their issues, wants, and any thoughts about possible solutions that might work well for either side.

Excerpt: Mediation 8

Party 1- she has a live in boyfriend, maybe he should help. It's not my place but I mean there are children there, and I don't know the relationship, I don't know if its his child or not, but ya know but...

Mediator- right I mean I heard you say “: its not my place” at the same time, what is your place is to, here in this mediation, *come up with ideas that really could lead to an outcome that would work.*

Here the mediator emphasizes again the particular party's roles in the mediation but also underlines the advantages of this case being in mediation. The party express their hesitation in the statement that they made, and how they feel intrusive into the other party's personal life by making the comment about her boyfriend. The mediator takes this hesitation and turns it into an advantage, underlining the appropriateness of this kind of comment in the informal, conversation setting of mediation. The mediator states that this is not inappropriate but rather a method for productively thinking about plausible solutions and resolutions. The mediator is underlining the advantages of mediation as well as reiterating the role of the parties in the mediation process.

Summary of Results

My research shows a large reliance on questions in the language of mediators. I identified linguistic features of the language in mediation such as the inclusive we and the mediators' self-reference, that are not commonly discussed in mediation text books and training manuals. My analysis focused on the use of questions as I found that these were the most commonly used in all mediations and represented a very significant percentage of the mediators' speech. I identified these questions as fitting into the different categories described above, based on their placement and intended effects, represented by the mediator's speech, as well as their actual effect in the mediation, based on the parties responses. These questions are essential to looking into the language used in mediation and are a key tools in how mediators facilitate the process of mediation.

CHAPTER 5--- DISCUSSION AND CONCLUSION

Discussion of the Results

My research and analysis revealed an interesting insight into how mediators use language in the process of facilitating mediation. Analyzing mock mediations from a linguistic view showed that mediators use a variety of different question categories to help the parties have more productive conversation and negotiations about the legal and emotional issues in various mediations. I categorized the questions that I found were used by mediators into several question categories described in the previous chapter. These different question categories are used by mediators in a variety of mediation situations as well as different situation dynamics. Literature on mediation and my research revealed that mediators, although having different backgrounds and differing mediation styles as well as involved in diverse mediations topics, tend to use the same kinds of question categories.

My identification and analysis of these different question categories show that mediators rely strongly on language as an action. Their questions not only create the particular neutral, informal and conversational environment needed for mediation, but also cause certain changes in the parties' approach to dispute, direction of conversation, or discussion about the solutions and agreement points. Without these changes, parties may never work out settlements or express agreement to any of the issues discussed. My research shows that mediators are skillful in their selection of these different types of questions and are much attuned to the possible effects and potential uses of the various question types. This again

emphasizes the importance for mediation trainees to be learning about these particular question categories and understanding better how to use them and when. This research emphasizes the importance of expanding the descriptions in mediation training books to include different categories of questions, their uses and purposes, in order to better describe the actual language features that mediators use in mediation.

The categories of questions that my analysis identified include some types that are not discussed in general linguistic discussions of questions. These include agreement questions as well as further proposal questions that prove to have an important effect when used in mediation. These two categories of questions, in particular, emphasize the actions and changes that mediators can create through their use of questions. Agreement questions have a very important task in the progression of mediation. Their use in mediation creates points within the linear progression of each individual mediation. The use of agreement questions creates certain stopping points for the progress made in the mediation. These questions underline the agreements and negotiations already concluded between the parties and underline the progress made to that certain point. Not only do they create these kinds of stopping points to reiterate the progress made on a certain issue, but also by creating an agreement point between all the parties in the mediation. They also generally close the discussion of the issues or topics being agreed upon. The use of these agreement questions provides evidence for a point of progress and also allows the topics to be closed from further discussion so that the conversation can progress towards further negotiations and issues.

The other question category that has a large effect on the process of mediation is the use of further proposal questions. My research showed that mediators used this category in

several ways. Most importantly their goal is to encourage the parties to rethink their current standing in the negotiations. The data showed that mediators tend to use these questions when one or both parties seem to be unsatisfied with the direction of the negotiations or are at an impasse in the conversation on a certain issue. They use these types of questions to encourage the parties to rethink the direction in which the mediation is headed as well as their own stance in the negotiations. The mediator seems to be underlining changing points for the mediation and a need for the parties to want to continue back and forth negotiations rather than just information sharing or fact finding. The mediations show that these kinds of questions can help move the parties more towards practical solutions and actual discussion of possible agreements and away from impasses, barriers, argumentation over information, or even being stuck on receiving everything that they want. In this way further proposal questions have a very important function in moving the conversation in each mediation forward as well as working through possible stopping points that can occur in mediations.

In addition these further proposal questions emphasize the role of the parties in the process. Through the use of these questions, the mediator is giving the party or parties the power to decide the direction of the conversation of negotiation. These questions act as power creators and give the parties the option to have authority over the process (which is generally given to the mediator) as well as their power over what issues are discussed and how they are resolved. This helps the party feel more in control of the process which might make them more willing to move forward in negotiations or the conversation as well as focus more on their own want for a resolution to the issues.

Not only did the research underline the importance of different question categories and their uses and effects within mediations, but it also showed further linguistic features that are abundantly present in the speech of mediation. Several other linguistic features that indicate the mediator's emphasis on neutrality and the mediation as a group conversation and most importantly a group task (to work through the problem). Although I did some analysis of these kinds of features, such as my identification of the "inclusive we" as the mediators equalizing power between the parties as well as including themselves in the center of the conversation, the abundant presence of these and other linguistic features indicating neutrality calls for further research into the discourse of mediation.

In terms of the analysis of the discourse of mediation, my research into the analysis of the discourse of law, often categorized as a part of forensic linguistics, does not encompass the way in which language of mediation should be looked at. Analysis of legal discourse tends to focus on the use of language to identify and enforce social order and legal justice. The language used in arbitration reflects the strict regulation and goal oriented nature of courts, trials, and other forms of formal proceedings. That is to say that lawyers have certain end goals with their use of language and are working towards proving a certain point or extracting a certain statement for the individual they're speaking with. This makes the focus of legal discourse task oriented (proving social order and showing guilt) and much more structured in terms of the types of linguistic tools that lawyers use. On the other hand, research into the language of mediation shows that a different linguistic approach is needed to look carefully into how mediators use their language in mediation. I suggest that research in linguistics should follow the analysis tradition of Conversation Analysis as well as pragmatics and should be treated as a

particular speech event in which there is a particular level of informality and very particular, but usually disguised, power dynamics between the mediator and the parties. Furthermore, mediation should be primarily looked at as a conversation and linguistic research should look into how the different conversational competence features, as well as how the different conversational maxims apply to the process of mediation.

Application and Uses of the Research

The findings provided by this research are important to the linguistic analysis practices of mediation as well as the practice of mediation and especially the teaching of mediation. Most importantly, this research showed the need for linguistics to analyze the language of mediation. The analysis showed first and foremost that mediation training manuals do not commonly describe the most prominent language features in the mediator's language: questions. Mediation manuals do discuss the use of reality testing questions that are a unique tool used by mediators to produce a certain action in the mediation, but they do not describe the other types of questions that are used just as prominently and for various different actions. In fact, my research indicated that reality questions were the least commonly used type of question in the mediator's speech.

The research indicates that these question are also widely applicable to different types of mediations. These question categories can be very useful to different mediators and especially mediation trainees when having to adapt to different mediation dynamics and issues. This calls for a need to look deeper into the language of mediation from a linguistic analysis point, as the mediation training books seemed to be based on the general theoretical idea of

how the practice of mediations compare to the practice of law. Mediation trainings books also focus on the historical techniques in mediation as well as practices spanning from arbitration and negotiation strategies (Blades, 1985; Hill, 1998; Folger & Bush; 2001; Goodman; 2004). It seems to be the case that this particular approach by mediation training manuals continues to focus on mediation training for practicing lawyers and individuals previously experienced in the legal system. Not only has mediation grown as an individual methodology, and continued to expand in use and application, but the individuals who train in mediation or desire to become mediators come from various professional backgrounds, not only law based. This suggests that mediation training books and manuals need to be more accessible to individuals without law experience and should focus on the particular tools available to the mediator, rather than emphasizing the arbitration practices that should not be used. My linguistic analysis starts to identify and show the important features used by mediators that are not discussed by modern mediation manuals.

There are several linguists, (Cobb & Rifkin, 1991; Jacobs & Aarhus, 2002) who look into the linguistic features of mediation. These particular researchers focus on the rhetoric of neutrality, and how neutrality is portrayed in the language of the mediation. They also have a strong focus on the categorization of mediation discourse. This kind of research along with my research analysis in regards to the use of different question categories, shows that mediation training books should include in their approach a better description of the tools available for mediators. Not only do these linguistic insights provide a more accessible description of the processes being used, but also can help expand the variety of tools available to mediators already experienced in the arbitration based aspects of mediation. The variety and diversity of

issues and conflicts represented in mediations require mediators to be constantly prepared for a vast number of possible emotional, complex, and intricate situations. Focusing on a mediator's change in language, and teaching the particular linguistic features that help facilitate different mediations can increase the mediator's adaptability to constantly changing mediation situations. That is to say that a focus on the common language characteristics used between different mediations and mediation types will prepare new and experienced mediators for the different situations that they may encounter. In summary, mediation training books should focus on the specific language features used rather than preparing mediation trainees for only certain aspects of the mediation process.

Conclusion

My research showed that questions are the essence of how mediators facilitate the process of mediation in the form of a productive conversation between the two parties in conflict. As shown in the previous chapter, questions are the bulk of the language used by the mediator in the mediation and not only do they request information but they allow mediators to lead the conversation in particular directions.

When looking in mediation training manuals, mediation textbooks, and other literature that aim to teach individuals mediation and inform about the tools available for mediators to facilitate the process of mediation, reality testing questions, as well as open-ended and closed questions are the main focus of any writing about questions used in mediation. As my research showed, different kinds of questions are abundant in the language of the mediator and I found that there are definitely particular instances and purposes for which different categories of

questions are used. The example and analyses of these categories, described in the previous chapter, provide evidence for the important functions of different questions and their categorization within mediation. Mediation manuals and textbooks should put a larger focus on the use of questions used by mediators and trainees should be given better examples of the types of wording of these questions as well as specific instructions for their use during mediations. This information would add to the tools already available for mediators to use in mediation.

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APPENDIX A

TRANSCRIPTION CHART

(0.6) – in parentheses time gap between speech

(.)- time gap of less than two second

. – ending intonation

? – raised intonation

//- interruption (one individuals speech stopping all other speech)

=- continuation of a sentence that has an interruption in between. (or an interruption that “latches to the speech”)

[] indicate the start and finish of overlapping speech

(())- nonverbal activity

- - at the end of the word indicates a sharp cut off of word or sentence

() – empty brackets are unclear on tape

CAPITAL- used to indicate a louder word (raised intonation)

talk - used to show something is noticeably quieter

>talk< - word inside carats indicate speed up or compressed speech

^talk^ -crying/ hysterical speech

+talk+- laughing speech

“talk”- word emphasis