CREATING DELIBERATION IN THE CONTEXT OF SOCIAL CONFLICT:

THE EXAMINATION OF MEDIATOR PRACTICES FOR

SHAPING AN INTERACTIVITY IN DISPUTE MEDIATION

by

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ABSTRACT OF THE DISSERTATION

Creating Deliberation in the Context of Social Conflict:

The Examination of Mediator Practices for Shaping an Interactivity in Dispute Mediation

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The dissertation explored how deliberative activity is constructed within ongoing social conflict. The study examined mediator actions for keeping the disputants on task – that is, on negotiating plans about caring for their children. This focus enabled an empirical investigation of three interrelated theoretical interests: (1) how an institutionally preferred form of interactivity is constructed in the ongoing course of interaction, (2) the role of the mediator as an ostensible designer of communication activity, and (3) the relationship between interaction and reasoning. An existing collection of 18 transcripts from audio recordings of mediation sessions at a mediation center in the western United States served as a source of interactional data. The participants of mediation sessions were eight mediators and 17 divorcing or divorced couples. The main focus of observation was on mediator communicative practices for keeping disputants on task. These were observed by attending to the word choices of mediators and their language actions evident across a corpus of transcripts. As the dialogue quality is a mutual achievement of all the participants, not just the mediator, the

center of attention was also on different linguistic and interactional resources disputants provide in the course of interaction. The simple categories were useful for getting at higher order concepts such as topics and dialogue activities. There were four main findings from the empirical study. First, an institutionally preferred form of interactivity is constructed ongoing, often implicit, negotiation of what is on or off task through the uses of linguistic and interactional "materials" available in the moment to the participants. Second, mediators' uses of language to make references, establish topics, and launch dialogue activities are design moves that signal what is on-task and thus articulate the deliberative activity. Third, mediators construct their interventions in such a way as to balance concerns for face and the institutional goal for interaction. Fourth, argument and reasoning are constituted through interaction that imposes various constraints on what contributions are appropriate in mediation talk.

ACKNOWLEDGEMENTS

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CHAPTER 1

INTRODUCTION

This project is an exploratory study that examines transcripts from dispute

mediation to explore how people in conflict attempt to deliberate – that is, to use

discussion to determine a prudent course of action (e.g., Aristotle, 2000). The mediation

sessions involve divorced or divorcing couples attempting to create or repair a plan for

child custody arrangements. A practical problem participants face when attempting to

deliberate is that out of all the possible ways the interaction could go they must create this

activity out of their conflicted circumstances. The parties not only determine what they

are talking about but how they will talk about it. The dissertation examines how this

puzzle of deliberation is handled and with what consequences.

Of particular interest here is how mediation supplies a format for deliberation as a

way for disputants to manage their conflict. A mediator who aids the deliberation process

is part of this interaction, so the emergence and management of disagreement is not just

local and informal, but it is also institutional.

Chapter 2 introduces theoretical grounds for the project. It makes a review of

contemporary theories in argumentation and interaction as a type of social organization,

its features and forms with a special focus on how interaction and ways of reasoning are

linked. The chapter discusses the idea of communication design and mediation talk as a

specific form of institutional talk.

Chapter 3 explains the methodological aspect of the study. The research for the

dissertation project is organized around an empirical analysis and theoretical reflection on

transcripts from divorce mediation sessions. The institutional talk differs from an

ordinary conversation in different aspects (the lexical choice, turn design, sequence organization, overall structural organization, and social epistemology and social relations) (Drew & Heritage, 1992). Thus, at the empirical level of the transcript analysis, the study is designed to describe how pragmatic uses of language bring-in and leave-out aspects of social context in mediation talk as it develops over time. This is accomplished by creating a detailed description of references participants make, the way their contributions are framed, topics they raise, and things that get picked up and dropped in the course of discussion. It is helpful for understanding how the interaction unfolds, how participants orient to what is going on during the session, how and where shifts in the flow of activity and topics occur.

The project involves analysis of 18 transcripts of dispute mediation. Eight mediators conducted mediation sessions with 17 couples (one couple participated in two sessions). Studying the overall corpus of transcripts is beneficial for understanding how the process of deliberation is organized in dispute mediation, as it makes it possible to distinguish general and recurrent features of this type of interaction.

Chapters 4-8 discuss the analyses of the study. Chapters 4-6 examine the matters raised in the course of mediation sessions that mediators treat as *on-task* or *off-task* . For the purpose of this project, being on-task is considered at three levels, namely, at the level of references participants make in the course of sessions (chapter 4), at the level of topics (chapter 5), and, finally, at the level of dialogue activities (chapter 6). Acting in an on-task mode is defined as bringing in institutionally relevant references, discussing institutionally preferred types of topics, and engaging in institutionally appropriate dialogue activities, whereas types of topics and dialogue activities that do not contribute to the goal of the

mediation session are defined as being off-task. Chapter 7 analyzes moves mediators make to bring the interaction back on track when disputants go off-task. Finally, chapter 8 investigates how the mediator contributes to shaping an institutionally preferred form of interactivity by bringing to the forefront institutionally appropriate identities of participants.

Examining what is treated as on-task and off-task and how the on-task mode is maintained is helpful for understanding how the mediation session is constructed. Any activity, particularly institutional talk, bears constraints on what is allowable and what is not acceptable in its course, depending on the goal of this activity (Drew & Heritage, 1992; Levinson, 1992). One of the ways to see how a particular talk in an institutional setting is organized is to see what matters are treated as institutionally relevant for the discussion and what is treated as off-task. As a representative of the conciliation court, the mediator is in an official role to keep participants focused on goals, identities, and tasks relevant to the institutional context. The following chapters describe mediator practices for keeping the interaction relevant to the task of divorce mediation in this court system. These include the word choices of mediators, the timing and sequencing of language actions, and controlling the agenda of the meeting and the dialogue activities.

Dispute mediation that is focused on creating visitation and/or custody arrangement for children is a particular kind of mediation that does not exhaust all possible ways mediation sessions within the court system can get organized. The specific objective of these mediation sessions sets constraints on the interaction in terms of what can be talked about and what can be done during these sessions. The mediator contributes to constructing a specific form of interactivity in the moment of the session by advancing

certain dialogue activities, topics, and identities and discouraging others. I suggest that different references that mediators make and topics and dialogue activities they initiate can be considered as design moves in the way these moves highlight the preferred form of interactivity for the setting of divorce mediation.

The analysis describes how participants manage tensions between the institutional preferences for on-task interaction and the way participants might otherwise engage each other. This description will provide a basis for explaining how participants work out what is institutionally relevant in the course of interaction.

The following chapters show that taking into consideration aspects of dispute mediation as institutional talk and the tension between the institutional order and the interaction order is vital for understanding dispute and argumentation. In the course of interaction what becomes arguable and what strategies speakers use in making matters arguable are constrained by the interaction process and the institution of divorce mediation in this court. By introducing institutionally appropriate topics, dialogue activities, and identities and terminating irrelevant ones, mediators shape the disagreement space and, to a certain degree, control what can become arguable. They design their moves depending on disputants' language behavior.

The empirical aspect of this project provides material for theoretical reflection on how deliberation is created in the context of social conflict in the circumstances of mediation intervention. Chapter 9 provides a summary of findings and discusses their theoretical implications for advancing our knowledge of institutional talk, communication design, and argumentation.

CHAPTER 2

LITERATURE REVIEW

In this section I will lay theoretical grounds for the project. I will focus on contemporary theories in argumentation and interaction as a type of social organization and its features and forms. I will discuss how interaction and ways of reasoning are tied. Finally, I will turn to mediation talk as a specific form of institutional talk.

Contemporary Approaches to Argumentation

Contemporary approaches to argumentation have emerged as a reaction to the conventional view of formal logic and treat argumentation as a dialogic process (Jackson & Jacobs, 1981; van Eemeren et al., 1996; van Eemeren & Houtlosser, 1999; Walton, 1998, 2000). Unlike the more traditional, speaker-centered approach to argumentation, dialogical approaches view a conversational argument as a collaborative activity where interlocutors "incorporate into their own lines of argument the contributions of their conversational partners" (Jackson & Jacobs, 1981, p. 79). These approaches are interested in the ways to discipline argumentative interaction to produce higher quality content. They have shifted to considering not just single moves but kinds of activities and the arrangement of an activity relative to argument. The researchers try to develop norms and rules specific for this activity that arguers are supposed to follow to make it effective. One of these normative approaches to argumentation is pragma-dialectics that developed a model of critical discussion with the view of resolving the difference of opinion.

Pragma-Dialectictical Approach

Pragma-dialectics views argumentation as a specific type of communicative activity and focuses on specifying the rules and conditions for one type of idealized

dialogue, namely, a critical discussion, and more recently on conventionalized types of

argumentative activity, for example, adjudication, negotiation, and mediation (van

Eemeren et al., 1996; van Eemeren & Grootendorst, 1984; van Eemeren & Houtlosser,

2005, 2006). It seeks to bridge the gap between descriptive and normative views of

argumentation and to interweave the two perspectives. As ways of interacting and ways

of reasoning are linked to each other, pragma-dialectics attempts to develop certain rules

and procedures that can enforce disputants to resolve their conflict in a highly rational

way.

The theoretical component of this approach is reflected in a model that integrates

pragmatics, which is focused on language use in the context, and dialectics, which studies

critical dialogue (van Eemeren & Houtlosser, 2006). The pragmatic aspect of pragma-

dialetics is derived from speech act theory (Austin, 1975; Searle, 1962, 1969) and the

logic of ordinary discourse (Grice, 1991) and is reflected in the idea that rationality is

procedural, that is, it is found in the form of interactivity people engage in. As any

interaction, the critical discussion is a rule-based activity. Thus, van Eemeren and his

colleagues developed a model of critical discussion, according to which, there are ten

rules that parties should follow in argumentative situations to resolve a difference of

opinion (e.g., "Parties must not prevent each other from advancing standpoints or from

casting doubt on standpoints" (Rule 1) or "A party that advances a standpoint is obliged

to defend it if asked by the other party to do so" (Rule 2) (van Eemeren et al., 1996, p.

283-284)). The critical discussion is an ideal model that makes it possible to differentiate

various conventionalized types of argumentative activity along four parameters (four

stages of the critical discussion). In contrast to the theoretical model of critical

discussion, these argumentative activity types can be observed empirically in communicative practices of the argumentative discourse and manifest themselves in institutionalized forms of interaction (e.g., political debates) (van Eemeren & Houtlosser, 2005).

The dialectical aspect of this approach is based on the idea of critical dialogue. In pragma-dialectics, "the various moves made in argumentative discourse are seen as part of an implicit "critical discussion" aimed at resolving a difference of opinion concerning the acceptability of a view or standpoint" (van Eemeren, Meuffels, & Verburg, 2000, p. 418). One of the basic methodological premises of the pragma-dialectical research, socialization, emphasizes that this process of resolving a difference of opinion is not abstracted from the communicative course of action but requires the collaboration of individuals to arrive at agreement (van Eemeren et al., 1996).

Pragma-dialecticians are interested in norms of argumentative reasonableness and find the quality of argumentation of great importance. According to van Eemeren and Houtlosser (2006), "A theory of argumentation . . . must be attentive to critical standards for assessing a discussion aimed at resolving a difference of opinion" (p. 5). Their view of rationality, however, is different from informal logic as they focus on discussion procedures that will enable interactants to argue effectively rather than just on logical arguments.

The theoretical model of argumentation suggested by pragma-dialectics consists of four stages: the confrontation stage where a difference of opinion gets manifested; the opening stage where the commitments and roles of the participants are identified; the argumentation stage where the protagonist defends his or her standpoints while the

antagonist raises doubts about them; and finally, the concluding stage where the participants determine whether the protagonist succeeded in defending the standpoints and whether the difference of opinion was resolved (van Eemeren & Houtlosser, 2006). At all these stages, participants should observe the norms of a reasonable critical discussion to have an effective argumentative discussion.

These pragma-dialectical rules and stages developed for an ideal discussion impose certain constraints on how a naturally-occurring argumentative talk should unfold. Arguers in real interaction, however, do not necessarily follow this format as, on the one hand, the interaction itself has its own constraints, and, on the other one, parties can have their own goals in this discussion. This led the researchers to revisiting their model and incorporating interactive matters at hand to fit into the flow of the activity. Pragma-dialectics addresses this issue through the idea of strategic maneuvering.

Strategic maneuvering. One of the key concepts that pragma-dialectics introduces is strategic maneuvering (van Eemeren & Houtlosser, 1999, 2001). This concept arose because participants not only pursue the goal of the discussion, which is the resolution of difference of opinion, but also try to achieve their own goals. In strategic maneuvering, interactants use rhetoric moves to lead the discussion in the direction that is most advantageous to them for reaching their aim. The strategic maneuvering manifests itself "in making an expedient choice from the options constituting the *topical potential* – the set of relevant alternatives – associated with a particular discussion stage, in selecting a responsive adaptation to *audience demands* – the listeners' or readership's expectations and preferences, and in exploiting appropriate *presentational devices* – the phrasing of moves in the light of their discursive and stylistic effectiveness" (van Eemeren &

Houtlosser, 2001, p. 152). Although pragma-dialecticians emphasize that interactants' primary goal is the resolution of difference of opinion and not just getting things their way and that they are expected to follow the rules of critical discussion while trying to reach their ends (van Eemeren & Houtlosser, 2001), the important point of strategic maneuvering is that interactants shape the discussion using opportunities available to them in this very interaction. The strategic maneuvering is context-dependent and is affected by the argumentative activity type that is carried out (van Eemeren & Houtlosser, 2005). What participants talk about in the course of the discussion can be restricted by some agenda (e.g., creating a plan for child custody arrangements in mediation) but how this discussion will unfold depends on how parties will exploit different topics and how they will frame their moves.

Undoubtedly, this approach to argumentation is a big advance in the development of argumentation theory but it has its own shortcomings. Although it incorporates empirical observation of communicative practices, it is still a normative-critical orientation that presupposes the ideal model for argumentative discussions and the only one way of linking interaction and reasoning for the deliberation to be effective. Argumentative discussions, however, can vary in their types. The recent development of the pragma-dialectal approach to argumentation (e.g., introducing conventionalized types of argumentative activity) recognizes this variation that can be observed in real communication. These activity types, nevertheless, are not well described. Besides, they are still based on norms developed theoretically rather than empirically and derive from the model of critical discussion. Walton's work is another version of normative pragmatics. Whereas pragma-dialectics focuses on the developing rules for pursuing a

difference of opinions in one particular type of dialogue, Walton suggests that we should consider different models for conflict resolution. This approach will be discussed next.

Dialogues and Dialectical Shifts

Another contemporary contribution to argumentation theory is made by Douglas Walton, who developed his approach in the context of recent attempts to revive Aristotle's dialectical conception of argument. The researcher emphasizes that traditional logic with its inductive and deductive standards is not appropriate for explaining and evaluating argumentation in everyday conversations. Walton's work is an attempt to bring communication ideas into a theory of informal logic. His perspective on argument is pragmatic because it takes into consideration the context and the goal of an argumentative exchange. It is dialectical because it treats an argument as dynamic and incorporates the idea of interactive reasoning. Participants take into consideration each other's knowledge base, and reasoning takes the form of a dialogue (Walton, 2000). As kinds of dialogue vary, so do the ways people reason, which is, in some way, consistent with the idea that the social epistemology aspect of interaction is not the same for different types of talk (Drew & Heritage, 1992), which will be addressed in the next section.

The concept of types of dialogue is one of Walton's main contributions. Walton understands a dialogue as "a verbal exchange between two parties, according to some kind of rule, conventions or expectations" (Walton, 2000, p. 333). According to Walton (1998, 2000), dialogues have different schemes and vary in terms of goals. What is appropriate or inappropriate in a certain type of dialogue depends on its goal. Violations

are moves that divert interactants from achieving the primary goal of interaction (e.g., negotiation).

The main types of argumentative dialogue are information-seeking with the goal of finding information; persuasion dialogue, the main aim of which is to persuade the other party to accept some proposition; negotiation that involves conflict of interest and the aim of which is personal gain; quarrel that involves personal conflict and where each participant tries to attack verbally the other party; inquiry, the goal of which is to establish collectively proof of some proposition; and deliberation that arises in the situation where there is a practical conflict due to the existence of two or more alternative ways of doing something, and thus the aim of the dialogue is to produce action (Walton, 2000).

Every type of dialogue has its specific features such as commitments, the structure, and moves. For example, in the negotiation dialogue, as well as in the deliberation dialogue, the commitments of participants are towards some course of action, whereas in the persuasion type of dialogue, it is towards the truth or falsity of a proposition (Walton, 1998). The structure of the negotiation dialogue is similar to the critical discussion discussed earlier. The moves interactants perform are considered to be relevant if they fit the normative structure and the goal of this type of dialogue. Threats that are illicit arguments in the persuasion type of dialogue, for example, can be appropriate ones in negotiation.

Another of Walton's important contributions is the idea of *dialectical shifts*. Different types of dialogue can occur in one argumentative discussion. In this case, there occurs a dialectical shift, that is, "a change from one context of dialogue to another"

(Walton, 1992, p. 23). For example, interactants can be initially involved in a scientific inquiry, and, at some moment, they can shift to a persuasion type of dialogue, and then they may or may not come back to the initial one. Sometimes dialectical shifts are quite distinct. In other cases, shifts occur gradually, and in still other cases, types of dialogue can overlap (Walton, 1998).

The effects of these shifts can be different. In some cases, the new dialogues that happen within the same sequence of argumentation can contribute to the previous one in a favorable way. For example, in the process of negotiation, interactants may happen to need some extra information, and there will be a shift to the information-seeking type of dialogue. This can improve the quality of the negotiation dialogue and, thus, the shift is beneficial (Walton, 1998). In other cases, however, they can hinder the progression of the original dialogue, for example, if a shift happens from the negotiation dialogue to a quarrel (Walton, 1998). In general, to determine if the shift is illicit or not, it is necessary to consider the context of the original dialogue and to identify the new context. If the new dialogue supports the goal of the first one, the shift is relevant.

The employment of the concept of dialogue and dialectical shifts is an attempt to bring a communication aspect into theory of informal logic and a big step forward in the development of this theory. The theory of dialogue types, although quite distinctive, shares with communicative approaches such as speech activity systems in conversation analysis and Levinson's activity types an idea that interaction has a range of forms, which will be discussed in the next section. It should be mentioned, however, that Walton makes distinction between actual dialogues and formal ones (Walton, 2000). In formal dialogues, there is a certain structure and clear rules that participants are required to

follow. These rules, as Walton points out, are not necessarily realistic. In actual dialogues, the rules are not so precise and there is more ambiguity about what can happen. In his work, Walton focuses on types of dialogue and dialectical shifts from a normative perspective. Walton states that dialectical shifts happen but how they happen in real interaction is not apparent.

In summary, recent theory on argumentation has pointed out the importance of discourse in understanding fundamental concepts such as reasonableness. These theories focus on how reasonableness is located in the process and procedures of dialogue and develop dialogue logics as a way to explain argument in social interaction. Interaction and dialogue are the basis for reasonableness. Pragma dialectics has critical discussion and now institutional argument; Walton has dialogue activities. Underlying both approaches is the idea that there are abstract models of dialogue (and by implication the role of argument) that people implement in interaction through language use, roles, or through institutionalized rules of conduct. Despite an interest in being more empirical, this is largely a normative point of view where the aim is to articulate models that can be used to judge the argumentative quality of messages and the reasonableness of participants. What these theories miss is how argument and reasoning are embedded in and constituted through interaction that imposes its own constraints on what can be appropriate contributions to the talk. Next section will focus on the interaction order and institutional talk and will discuss how reasonableness is embedded in the interaction and in variations off of ordinary interaction in institutional talk.

The Interaction Order and the Institutional Order

The idea of the interaction order developed by Goffman (1983) implies that there is order in interaction independent of society and individuals. A participant's status, age, gender, race or any other personal attributes and social structures do not matter in this case. Orderliness of interaction stems from interaction itself and is shaped by participants of this interaction. For example, the necessity for people to understand each other in order to coordinate actions is an interactional constraint and is different from constraints that can be imposed by social institutions and social roles (Rawls, 1989). At the same time the interaction order can shape other social structures, for example, social relationships (Goffman, 1983). A simple exchange of greetings when people happen to be in proximity can initiate social relationships of acquaintanceship. In case this relationship is established, these individuals are obliged to exchange greetings when they encounter each other again and to inquire and update the other about one's circumstances. These interactional constraints can help to build the relationship further and can eventually lead to more intimate relationships, which is a certain kind of social structure. Although this is an example of creating some basic social structure, the point here is that interaction is an essential part in constructing social institutions of any level, which will be discussed later on.

Goffman and the Interaction Order

According to Goffman (1983), the order of interaction is based on constraints placed by the need of a presentational self to be achieved and maintained in and through interaction. These constraints are of a moral nature. When people are engaged in interaction, they become vulnerable (bodily, mentally, and emotionally) through physical

actions and verbal and nonverbal messages. To minimize risks associated with interaction, interactants have obligations to handle an encounter in the manner that will allow a participant to sustain not only his/her face, but the face of others as well. As Goffman (1967) states, the maintenance of self is not a goal of the interaction; it is a condition for it. Goffman compares constraints of the interaction order with the traffic code. As traffic rules represent constraints for drivers on their way to some destination, the rules of face-saving work in the same manner for interaction. Sustaining these rules is a way to mutually orient toward interaction. Thus, it becomes possible to create meaning. Working cooperatively towards maintaining presentational selves enables interactants to get where they are heading in their interaction. The important point here is multifunctionality of interaction and actions participants perform. In the course of interaction people do not just focus on reaching some personal goals and on dealing with propositional logic but also on the needs of interaction itself (e.g., constitutive achievement of self). For example, interaction requires people to orient to each other, that is, to nonverbally include some people in conversation and exclude others. Through these practices the interaction order is accomplished. Thus, Goffman explained important aspects of interaction as a social organization; however, they are not the only ones. These other mechanisms will be addressed next.

Conversation Analysis and the Interaction Order

An important contribution of Goffman is seeing an individual as a product of interaction. However, concentrating mainly on an interactional achievement of self as a basic constraint on the interaction order, Goffman did not pay due attention to linguistic aspects of interaction (Rawls, 1987, 1989; Schegloff, 1988). One of the criticisms leveled

at Goffman was that, although he stated that the interaction order is independent of individuals and society, he was more interested in an individual than the structure of talk (Schegloff, 1988). The latter has become the focal point of conversation analysts who are interested in how meaning is achieved interactionally and how the order is locally produced (Sacks, 1984, 1987; Sacks, Schegloff, & Jefferson, 1974; Schegloff, 1990). As meaning is constitutive, it requires mutual commitment of participants to the needs of discourse. According to Sacks, this commitment is connected with the indexicality of talk: the fact that people tend to maximize the ambiguity in talk leads to the necessity to maximize the commitment to the rules of interaction. As Schegloff points out, there are three requirements generic to talk in interaction. They are the organization of turn taking, sequencing, and repair, which are forms of social organization of talk-in-interaction that serve as a basis for creating and coordinating social actions.

Although there is difference in how Goffman and conversation analysts treat the interaction order, these approaches, as Rawls justly notices (1989), complement each other. The *interactionality* of Goffman evokes relations and establishes who we are to each other and focuses more on nonverbal behavior of interactants, whereas the approach offered by conversation analysis brings to the scene a linguistic aspect and makes it possible to see the relevance of actions occurring in the course of interaction that involves verbal exchanges (Rawls, 1989).

Forms of Interaction, the Interaction Order, and the Institutional Order

Researchers (Drew & Heritage, 1992; Goffman, 1983; Sacks, Schegloff, & Jefferson, 1974) agree that the basic form of interaction is a face-to-face ordinary conversation, but they do recognize that this is not the only form of interaction.

Interactional forms, for example, speech exchange systems in conversation analysis, vary in their characteristics such as the degree of formality (Drew & Heritage, 1992). Some of them are formal and scripted (e.g., courtroom interaction or a wedding ceremony), others are informal and unscripted (e.g., family dinner), still some others fall in between (e.g., a meeting). For example, the more turn taking is constrained and uniform (Drew & Heritage, 1992), the less people are allowed to say what they want to in interaction (Atkinson, 1992), the more formal the interaction is considered to be.

Interactional forms vary in how turn-taking, repair, and sequences are organized and thus underlie different interactional activities. For instance, in an ordinary conversation, turn-taking does not follow any predetermined patterns, whereas in courtroom interaction, who is going to speak next is more or less preallocated, while a business meeting is somewhere in between (Schegloff, 1987). Regardless of differences in organization, the system of turn-taking is present in each type of interaction. However, the preallocation of turns in a varying degree is usually associated with institutional forms of talk that will be discussed next.

Institutional forms of talk. Focusing on interactions that can be gathered under umbrella of institutional talk, Drew and Heritage (1992) point out that institutional talk differs from ordinary conversation on five major dimensions, namely, lexical choice, turn design, sequence organization, overall structural organization of the interaction, and social epistemology and social relations. The lexical dimension is reflected in the use of "lay" and "technical" vocabularies, selecting descriptive terms to invoke one's role (e.g., the use of the self-referring *we* as a sign that a person is speaking as a representative of some institution), temporal references (e.g., using the "calendar" time). The

institutionality can manifest itself through the turn design that is related to an action

selection (e.g., request versus order) and the selection of words, grammatical and

syntactical structures to perform this action (e.g., the active voice versus the passive

voice). Sequence organization comprises turn-taking (e.g., three-part question-answer

sequences in the classroom) and the restriction of participants. Another important level of

institutional interaction is the overall structural organization of the interaction. Usually,

institutional forms of talk unfold through a standard order of phases. The final dimension

of the insitutionality concerns social epistemology and social relations. This aspect relates

to issues and themes usually "distributed across broad ranges of conduct in institutional

settings", revealed in and through other four dimensions of institutional talk and not

associated with any particular sequence of action (Drew & Heritage, 1992, p. 45). It can

manifest itself in the professional cautiousness in interaction (e.g., news interviewers try

to stay neutral in respect to the positions of their interviewees (Clayman, 1992)),

interactional asymmetries in terms of knowledge, participation, and conversational

resources (Drew & Heritage, 1992; Hutchby, 1996). But it is also related to the drawing

of inferences in the course of interaction and joint ways of reasoning (Levinson, 1992).

The orientation to the goal of a particular type of interaction rather than to

personal ones, at least by one of the participants, is one of the important features of

institutional interaction (Drew & Heritage, 1992). These goals are different from the

needs of interaction discussed earlier in reference to the interaction order. While

maintaining self and achieving meaning are constraints on the interaction order, the goals

mentioned above are institutional constraints on interaction. For example, in news

interviews the goal is to elicit some information from newsmakers (Greatbatch, 1992). In

the courtroom examination, the goal would be establishing the truth (Atkinson, 1992; Drew, 1992). Different activities result in part from the way people shape their contributions to the activity. One of the ways news interviews are constructed is through the specific use of questions and answers. Asking and answering questions is a common practice in any conversation. However, extended question-answer sequences, which are one of the characteristics of news interviews, are rare in ordinary conversations (Atkinson, 1992).

These institutional forms of talk carry certain constraints on what is considered to be an adequate contribution to the interaction, and what is a violation. Some conversational actions are avoided while others are promoted in institutional talk (Drew & Heritage, 1992). Take news interviews. It is an interviewer who asks questions, and an interviewee who answers them. The reverse would be a violation of the format of this institutional talk. Another feature of news interviews is that journalists have to do their job while maintaining their impartiality (Clayman, 1992; Greatbatch, 1992). They cannot express their own opinions on the discussed issues overtly. They manage to keep this formal neutrality by framing statements as assertions of third parties. Interestingly enough, this sustaining of impartiality is collaborative as interviewees tend to preserve the interviewer's neutral stance by attributing the antecedent assertion to the same third party, not attributing it to any one, or withholding any references to the assertion (Clayman, 1992).

Another aspect of institutional talk is types of reasoning and inferences that can be different from an ordinary conversation (Drew & Heritage, 1992; Levinson, 1992). For example, Levinson's (1992) idea of types of activity is based on a view of interaction

as goal-driven and the existence of inferential schemata corresponding to one or another activity. Levinson does not restrict an interaction activity to verbal exchanges (e.g., a telephone conversation or a meeting) but also includes those where speech is non-occurring or incidental (e.g., a game of football). In this respect, Levinson agrees with Goffman who understands interaction in a broad sense and states that the interaction order is present even when there is no verbal exchange (e.g., bus queuing). According to Levinson, the type of activity, on the one hand, imposes constraints on what is an allowable contribution to this activity, and, on the other hand, signals what inferences should be made. For example, one would not expect a person to cooperate during an interrogation in the way it is done in an ordinary conversation as anything this person says can be turned against him or her (Levinson, 1992). The inference schemata and ways of reasoning are tied to structural organization of interaction. For instance, the interactional structure of cross-examination can serve as an example of "a possible vehicle for the expression of an argument" (Levinson, 1992, p. 86). The question-answer format of cross-examination together with an assignment of questioner/answerer roles creates a turn-taking organization that allows the questioner to control the interaction and elicit responses that he/she will incorporate in constructing his/her argument.

   Tension between the interaction order and the institutional order. Many researchers orient to Goffman's idea of the interaction order in one way or another developing their point in distinctive and not necessarily compatible ways. Speech exchange systems in conversation analysis and Levinson's activity types are some examples how researchers approach interaction and its forms. The important point is, however, that the interaction order is present in all interactional forms, whether it is a

conversation, a lecture, or a hearing in the court, and, at the same time, the interaction

order and the institutional order are interwoven. The institutional order (e.g., roles, status)

can rise and become relevant in an informal conversation as well as in a meeting.

However, the degree of the presence of the institutional order (and, probably, the way it is

evoked) will vary. In this case, it is possible to place different forms of interaction on the

continuum where an ordinary conversation will be a relatively "pure" form of the

interaction order and more formal interactions heading to the other end.

The interaction order and the institutional order impose different constraints on

how the interaction unfolds. Some of these constraints can be in conflict with each other.

Thus, any interaction represents, to a greater or lesser extent, a tension between these two

orders. For example, as Rawls (1989) points out, we have to distinguish between the

meaning that is a constitutive achievement and that requires mutual commitment of

participants and the meaning that can be defined according to existing institutional

frames. In the course of interaction, people deal with both types. They usually have some

general expectations about the activity and make inferences based on these expectations

(Levinson, 1992; Rawls, 1989). But at the same time they are involved in creating a

meaning right at the moment of interacting, which can be different from those

expectations, and people have to face this problem all the time. This tension can be seen,

for example, in dispute mediation, where participants deal with the problem of crafting

deliberation out of conflict.

Argumentative Discussion and the Interaction/Institutional Orders

The research on interaction order and institutional talk has implications for

understanding argumentative activity. It highlights how reasonableness is embedded in

interaction and in variations of ordinary interaction in institutional talk. Activities are constructed out of contextual materials such as language and properties of social interaction. These activities structure what counts as reasonable (Levinson, 1992). This can be observed in an argumentative discussion, where, as in any interaction, the constraints of the interaction order are applicable. Participants have to sustain their selves and achieve meaning. At the same time, there are specific goals of this kind of interaction, for example, establishing the truth. The contemporary approaches to argumentation develop the models of argumentative discussion where the norms and rules do not necessarily stem from interaction itself. Bringing the interactional aspects into those abstract models gives insight into how argumentative activity unfolds in a real interaction. For example, if to consider Walton's idea of different dialogue types, each type of dialogue presents certain constraints for interactants, in addition to the constraints of the interaction order, depending on its goal. The dialectical shifts, in their turn, signal that an argumentative discussion is dynamic and multifunctional. As any interaction, it unfolds according to interactional mechanisms, so these shifts can be evidence of how these mechanisms work, how different goals and different interactional constraints get intertwined or come into conflict. A shift from a negotiation dialogue to a quarrel may happen because there is a threat to a participant's presentational self. Also noteworthy is that if there are shifts in dialogues in the course of one argumentative discussion, then there might be shifts in ways of reasoning as well. The idea of dialectical shifts is important then when it comes to institutional talk. The possibility of existence of certain ways of reasoning and certain types of dialogue can be a distinctive feature of some type of institutional talk.

The research shows that a real argumentative discussion unfolds according to some rules but they are not necessarily idealized norms developed in two areas of normative pragmatics (i.e., pragma-dialectics and dialogue types). The issue of how social epistemology of interaction is embedded in talk and how interactants argue in real interaction is addressed in the idea of conversational argument developed by Jackson and Jacobs (Jackson & Jacobs, 1980, 1981; Jacobs & Jackson, 1989, 1992). This approach to studying argumentation stems from empirical social science that focuses on the naturalistic investigation of conversation. It is descriptive and concentrates on actual communication practices. This approach is the focus of the next section.

Conversational Argument

The recent research on theory of argumentation has advanced our understanding of argument as an interactive achievement (Jackson, 1992; Jackson & Jacobs, 1980, 1981; Jacobs & Jackson, 1989, 1992). The researchers view argumentation as the activity of disagreement management that can happen in any interaction rather than a special kind of interaction (Jacobs & Jackson, 2006). It is a natural communicative process that takes place in non-ideal conditions. Hence, the puzzle the researchers address is "how argumentation is, can, and should be conducted under circumstances in which arguers are unwilling or unable to place themselves under the strict obligations of critical discussion, or when placing themselves under those stricter obligations is not a sufficient guarantee of a reasonable undertaking to resolve a difference of opinion on the merits" (p. 123). For example, this gap between how the interaction should proceed and what happens in a real situation can be seen in the mediation context. Ideally, mediators have to keep neutrality in the dispute, but actual practice shows that it is a myth (Jacobs, 2002).

The main focus of Jacobs and Jackson's (1989) research is the design of argumentation procedures: from the structure of the conversational argument to design resources of disagreement management. This approach is based on the theories of linguistic pragmatics. The researchers compare arguments to games, emphasizing that they, like any other speech events, are rule-governed and are produced according to general conversational principles. In their work, Jackson and Jacobs tried to identify systems of conversational principles focusing on the propositional content of speech acts. According to the researchers, those principles are relevant to any kind of argument, regardless of its quality (i.e., bad or good arguments).

Jacobs and Jackson (1989) state, "seeing communication as a game means searching for the knowledge needed to play it" (p. 153). With this view, the researchers suggest a model of conversational argument. This model of conversational argument is different from normative models of pragma-dialectics and Walton's dialogue types in that it is rooted in the properties of interaction itself such as sequence organization of the talk and repair mechanism, which are the basis for creating meaning and coordinating actions. Jacobs and Jackson's (1989) rational model emphasizes the goal structure of speech acts and a cooperative activity. This model is based on their understanding of conversation as a process where people coordinate their plans and negotiate meanings. Speech acts are seen as means of achieving goals and plans, and felicity conditions are preconditions for this. Jacob and Jackson's model links the function of utterances and sequence structure of talk. The bond between parts of *adjacency pair*[1] is explained in terms of goals. A relevant *second-pair part* (i.e., utterance types responsive to the action of a prior turn, such as

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[1] The adjacency pair is the basic unit of sequence structure of talk. It consists of two turns adjacently placed and conditionally relevant (e.g., action sequences *question-answer*, *offer-acceptance/refusal*) (Schegloff, 1995).

answer, rejection, grant) is conditioned by the goal underlying a *first-pair part* (i.e., an utterance initiating exchange, such as question, offer, compliment). This model also provides insight into the diversity of expansions based on conversationalists' actions relative to underlying goals of conversation. The important point here is multifunctionality of interaction. For example, in dispute mediation participants have to orient to the goal of the specific type of dialogue, the goal of this institutional talk, and also to preserving their selves, and to deal with the constraints of all these dimensions of the interaction.

What is more, the rational model offers that the properties of an argument as an act category are not fixed. They can change depending on an activity where it occurs, for example, in decision-making contexts arguments are usually assertions but in meditation contexts they can be treated by mediators as expressives (Jacobs & Jackson, 1989). Depending on how arguments are treated in a particular context, they will be either encouraged or considered inappropriate, which will have an impact on how interaction unfolds. Thus, it shows that interactive reasoning is tied to the way of talking.

One of the key ideas of Jacobs and Jackson's approach is that argument is an interactional structure that emerges from different types of activity; hence the researchers' interest focuses on management rather than resolution of disagreement. In their view, the argument serves as a kind of a regulative, or repair mechanism, the function of which is to manage disagreement (Jackson, 1992). In connection with this, the Jackson introduces the concept of disagreement space. This concept provides grounds for understanding how deliberation is shaped in the context of conflict.

Disagreement Space

Originally, the concept of disagreement space was introduced as an attempt to link the normative argumentation (van Eemeren et al., 1996; van Eemeren & Houtlosser, 1999, 2002; van Eemeren et al., 2000) and the conversational argument (Jackson & Jacobs, 1980, 1981; Jacobs & Jackson, 1989, 1992), and was tightly connected with ideas of speech act theory. Disagreement space is understood as a set of commitments, beliefs, intentions of the speaker that can be reconstructed from his actions and "called out" by another participant (Jackson, 1992), thus, providing opportunities for argument. According to van Eemeren, Grootendorst, Jackson, and Jacobs (1993), the emergence of disagreement is not necessarily related to the truth of propositions but can also be related to the felicity conditions associated with a communicative act that a person can be held accountable for performing. For example, in the performance of the act of criticism, the protagonist's credibility and qualifications can be "called out" (van Eemeren et al., 1993).

The same idea is expressed by a number of researchers, though they do not employ the concept of disagreement space as such and the speech act theory perspective. For example, Goodwin and Goodwin (1987) emphasize that not only the contents can be challenged "but also the general competence of someone who would produce such talk" (p. 210), or, in the case of a demand, the speaker's position to perform this act can be questioned (Goodwin & Goodwin, 1990). Hutchby (1996), in his turn, points out that "apparently innocuous and essentially nonargumentative actions such as mispronouncing a word" (p. 21-22) can become arguable. Analyzing radio talk, Hutchby shows how arguments emerge locally there out of callers' opening statements.

Disagreement space is not static as any move that participants undertake leads to its rearrangement, thus creating new opportunities for argument. An argument is considered as an interactional accomplishment, where both parties contribute to the unfolding of the argumentative situation and integrate their partners' moves into their own ones. This response-centeredness serves as a basis for Hutchby's (1996) Action-Opposition model, the main idea of which is that an opposition move is the primary element in an argument as it "*subsequently* formulates the prior action as an arguable" (p. 23).

Being dynamic, the disagreement space varies from one type of talk to another. Interaction itself and institutions can impose constraints on what can become arguable. Thus, the disagreement space of cross-examination is likely to be different from the one of mediation talk. While significant work is done on what can constitute disagreement space in general, it is less known how arguers in the context of institutional talk manage disagreement space and employ what is available in disagreement space to shape deliberation, to resist the institutional constraints or to use them, and to construct and manage conflict through the practical use of language. Mediation, in this respect, is a good arena for studying these aspects. Despite certain institutional constraints, participants of dispute mediation have more freedom in their interactional behavior than in some other types of institutional talk, which allows them to pursue their own goals.

Communication Design

The idea of argument as part of an ongoing activity and disagreement space as something that emerges is further developed in Jacobs and Aakhus's work where the disagreement space is viewed as an object of design (Aakhus, 2003; Jacobs & Aakhus,

2002a, 2002b). The design is natural in a sense that it emerges from the interaction itself (Aakhus, 2007). The participants of argumentative discussion mutually coordinate their interaction and collaboratively construct the disagreement space using linguistic and non-linguistic means available for them in the course of interaction. At the same time, the participants can have ideas about how the interaction should unfold to be effective. They use these tools to shape the interactivty in general, and disagreement space in particular, in a preferred way and avoid dispreferred ones according to the norms of a certain format. In this respect, the design is also hypothetical and theoretical.

This overall line of work emphasizes how procedures and tactics emerge from puzzles of interaction and the problems of constructing particular forms of reasonableness. For instance, Jacobs & Aakhus (2002a) point out how mediators' actions suggest implicit models of discussion that define reasonable ways to proceed in the face of differences and difficulties.

There are different models how dispute mediation can proceed but these models are not possessed by individuals. They become evident in the interactional practices of mediators and parties in mediation sessions. From that, modes of interactional reasoning can be formulated. The interaction unfolds in a different manner because participants of mediation sessions can have different visions of the rational way to proceed in conflict resolution. Disputants tend to handle their disagreement through having a debate, whereas mediators usually do not encourage argument but would pursue a bargaining activity (Jacobs & Aakhus, 2002a). Depending on how conflict is understood, Jacobs and Aakhus (2002a) distinguish three models of rational discussion: critical discussion, bargaining, and therapeutic discussion. The critical discussion is employed when

mediators treat the source of conflict in disagreement over facts and public values. In this case, the process of conflict resolution is argumentation and refutation. In a bargaining model, conflict is treated as arising due to competing interests among the principals in the conflict. Thus, the way to resolve conflict is through offers, counteroffers, and concessions. In this case, arguments are interpreted as resistance to accept offers rather than trying to reason together and discouraged by mediators. In a therapeutic model, the basis of conflict is misunderstanding and lack of mutual respect. Mediators employing this model encourage disclosing and explaining feelings and positions as a way to resolve conflict. It is noteworthy that the critical discussion that could increase the quality of dispute is not usually pursued in mediation talk. In less than ideal circumstances interactants do not follow the rules of a normative model. The important point here is that the mediator acts as a designer to construct a preferred form of interactivity. The way participants proceed to manage their difference of opinion is crafted by different modes of argumentation the mediator imposes.

An interest in design as a way of understanding communication led to the development of the communication design approach that views communication as an object of design and a process of design (Aakhus, 2007; Aakhus & Jackson, 2005; Aakhus & Rumsey, 2010). Communication design takes place when there is an intervention into an activity "through the invention of techniques, devices, and procedures that aim to redesign interactivity and thus shape possibilities for communication" (Aakhus, 2007, p. 112). This work is evident in the practices of mediators, facilitators, and other third parties who act as designers of interaction. Aakhus and Jackson (2005) point out seven things any designer of interaction ought to know.

These things include turn-taking formats, participant identity and face, commitments and the way they are formulated, the expandability of act sequences, the role of repair in the coordination of actions, consequences of design stemming from the interaction itself, and culturally shared assumptions of what constitutes appropriate communicative actions. The knowledge of these aspects is to aid designers of interaction to deal with the central puzzle of communication design, which is how to make forms of communication that seem to be impossible possible (Aakhus, 2007).

This line of research has advanced our understanding of argumentation in naturally-occurring interaction and the developing of the idea of communication as design. However, there are some gaps in understanding how reasonableness is constructed on the fly through interaction and with the materials of language and interaction, in any talk in general, and in the mediation work in particular. The next section will discuss the research on dispute mediation and what makes it a valid context for the present study.

Mediation Context

Mediation is a form of dispute resolution that aims to help two or more parties resolve their dispute through the help of a third party, that is, a mediator. It is an alternative to other more authoritative forms of dispute resolution such as a judge rendering a decision in court. Although mediators are representatives of the institution, they do not have formal institutional power to bring about a settlement. However, through the ways they communicate (e.g., by displaying themselves as experts) they build their interactional power and can influence and shape the outcome of the meeting (Tracy

& Spradlin, 1994). Mediation programs vary. They can be public or private, mandatory or voluntary. They also vary in terms of approach to managing conflict.

Mediation talk is an institutional form of talk where the goal of the interaction is to help disputants manage their conflict through deliberation. In contrast to authoritative forms of settlement, such as a courtroom judge or an arbitrator, a mediator does not make decisions for disputants but can only help the disputants make decisions. Mediators "nudge people to settlement" (Tracy & Spradlin, 1994) by managing the discussion. As any type of an institutional talk, mediation talk, although it varies among centers and practitioners, carries some expectations about lexical choice, turn design, sequence organization, overall structural organization of the interaction, and social epistemology and social relations. Mediators are there to enforce this institution for talk.

According to Garcia (1991), dispute mediation differs in its interactional organization from informal dispute resolutions in its turn-taking system, participation framework, discussion format, and departures from the participation framework. Mediation is a partly pre-allocated system as, for example, a complainant's story usually precedes a respondent's one, disputants may not interrupt each other whereas the mediator can, a disputant can choose to select the mediator as the next speaker but not the other disputant. Participants' statuses in mediation are also predetermined. Thus, disputants usually address their stories to the mediator rather than to each other.

One more feature of dispute mediation is a formal neutrality of a mediator (Cobb & Rifkin, 1991; Donohue, 1991; Jacobs, 2002). Mediators are supposed to facilitate a discussion between parties and not to take any side in this process (Jacobs, 2002). They manage to appear impartial using three tactics: indirect advocacy, framing advocacy, and

equivocal advocacy (Jacobs, 2002). Indirect advocacy takes place in the form of asking different questions. In applying framing advocacy, mediators summarize what disputants say. Finally, equivocal advocacy is related to providing information to disputants that will help to resolve the conflict. These techniques allow mediators to maintain a stance of neutrality and keep the discussion on track.

Another thing that differs between mediation and informal disputing is long discussion periods that consist of questions-and-answers sequences and where the mediator controls topics and shifts in them as well as participation in these discussions. When departures happen (e.g., when a disputant addresses an accusation directly to a co-disputant or when they get engaged in a number of accusation-denial sequences), the mediator can exercise his/her power to stop it and redirect the talk. In this way, Garcia (1991) argues, mediation prevents the development of conflict as the interactional organization of mediation puts constraints on expressing accusation, denials, and counter-accusations, allows participants to choose whether to ignore accusations or respond to them, and provides for mitigated disagreement.

However, mediation sessions do not always restrict interaction between disputants. For example, direct exchanges, including conflict talk, between disputants occur quite often, especially in divorce mediation sessions (Greatbatch & Dingwall, 1991; Jacobs, 2002). Disputants can get engaged in confrontation but initiate exit from conflict without help of the mediator, although it does not necessarily lead to the resolution of the conflict (Greatbatch & Dingwall, 1991). Jacobs (2002) also states that disputants can freely engage in arguing, contradicting, and disagreeing in general with each other, but mediators cannot be involved in this kind of exchange as they are

supposed to be neutral in this interaction. However, mediators do try to impose

constraints on the interaction and attempt to exercise control over the interaction. For

example, they can control what is talked about. Depending on the model of rationality

that mediators use to handle disagreement (critical discussion, bargaining, or therapy

models), what is relevant for an interaction will vary (Jacobs & Aakhus, 2002a). For

example, mediators can encourage disputants to express their feelings and attitudes to

promote a better understanding of one another and to resolve deeper conflicts, as it is

done in the therapeutic discussion. In the other two models, these expressions will be

irrelevant. Mediators will also try to focus disputants on future rather than past events as

the goal of interaction is to reach some agreement that they will hold to in their future

actions (Aakhus, 2003).

Every dispute presents a practical problem for participants to deal with.

Participants have to determine what they are talking about but they must also mutually

construct a way of talking to each other and of reasoning and resolving their conflict in

the context of different constraints. The interaction order imposes certain constraints on

how interaction should unfold. For example, interactants should act in the way that will

not threaten their own face and the face of the other party. However, they have more

freedom in selecting what face to present. The situation gets complicated, when the

institutional constraints come into play as well. In institutional talk, interactants are not

free to choose any face they want to. They are expected to take a certain role and to take a

certain line of action and reasoning according to the situation. For example, in such

institutional interactions as news interviews and court hearings, the professional behavior

of news-interviewers, arbitrators, and judges presupposes withholding from expressions

of surprise and affiliation in response to other participants of the interaction (Atkinson, 1992; Clayman, 1992). The tension between these two orders can influence how participants manage their interaction and make decisions. This tension, as well as disruptions of the interaction order and the institutional order, can be more vivid in the context of mediation sessions. First, although mediation is a type of institution, it is not that formal as, for example, court hearings or summit talks. So participants may have more opportunities to resist institutional constraints. Second, breaches of the interaction order are likely to happen during mediation sessions as sensitive issues are discussed there, and the vulnerability of parties to threats to their presentational selves increases. However, the interaction order must be sustained for this other activity to take place. It appears at times that mediation is geared toward enforcing the rules of ordinary interaction.

Mediation is concerned with the quality of participation and in particular the talk. The institution of mediation attempts to make people deal with their conflict through deliberation. The participants of mediation sessions are expected to orient to the goal of this form of institutional talk and follow its norms in their endeavor to settle the matter (Aakhus, 2003; Cobb & Rifkin, 1991; Donohue, 1991; Garcia, 1991; Greatbatch & Dingwall, 1991; Jacobs, 2002; Jacobs & Aakhus, 2002a; Pearson & Thoennes, 1984). The format of institutional talk provides material (vocabulary, turn design, sequence organization, overall structural organization of the talk, and social epistemology and social relations) to construct a way to determine a prudent course of action for those in conflict. The way mediation talk is organized at a micro level is related to the way of practical reasoning, which is part of the social epistemology of this institutional talk.

There is some open enededness in understanding the organization of argument and interactive reasoning in settings such as dispute mediation where argument is constrained to accomplish certain goals. This requires further research, specifically the study of mediators' work in crafting interaction into a form of interactivity and quality of communication. Highlighting one's practices does not mean disregarding the work of others. Any joint activity is mutually constructed (Clark, 1996), and other participants of mediation talk make their contributions to shaping this activity. Mediators, however, do some "design work". Their actions are a natural place to look at how activity is constructed and how reasonableness is crafted within it as they act as agents of the institution and are doing a kind of work that specializes in the management of disagreement.

What is of interest here is different linguistic and interactional matters that serve as resources for a designer of interaction to shape a certain form of interactivity. The interaction order presupposes that participants are mutually attending to the issues of a conversation and coordinating their actions. Institutions, in their turn, have their own interest in how the interaction should proceed to achieve the goals of institutional talk. The mutual focus of attention does not necessarily mean that participants of institutional talk engage in activity that is relevant to the task they have to accomplish. The question then is what matters the mediator treats as appropriate (on-task) for accomplishing the task and what matters do not contribute to achieving the goal of talk (off-task). Interactants' contributions (e.g., references they use, topics they initiate, and dialogue activities they encourage) construct the immediate world of the interaction. Of a particular interest is what linguistic and interactional resources the mediator uses to

construct a deliberative activity in an institutionally preferred way, what participant identities become relevant, and how disputants' conflict is framed in a particular way in less than ideal interaction that imposes constraints on how this interaction can unfold.

To sum up, the research on argumentation tries to connect interaction and reasoning and show that how people reason is consequent to forms of interaction. Although this area of research has developed important concepts that contribute to understanding interactive reasoning, it tends to be normative in that researchers try to create procedures for deliberation in ideal circumstances. However, deliberation in less than ideal conditions does not necessarily follow these norms and rules as any interaction carries constraints that influence how this interaction unfolds. At the same time, the institutional order imposes its own constraints on interaction. Thus, to a certain degree, interaction represents a tension between these orders that people have to deal with. Interaction varies in its forms, and this tension will be stronger or weaker depending on the form. The work on conversational argument has taken interactional matters into account and has advanced our understanding of how social epistemology of interaction is embedded in talk and how interactants argue in real interaction. This line of research has introduced disagreement space as a central concept for understanding the organization and conduct of conversational argument. Further research has launched the idea of disagreement space as an object of design, focusing specifically on mediation context. Mediation is a type of institutional talk that imposes constraints on how participants should resolve their conflict. At the same time, mediators can be trying to enforce the basic rules of the interaction order so that people can identify problems and talk about them. Mediation talk differs from other types of talk in its vocabulary, turn design,

sequence organization, overall structural organization, and social epistemology and social relations. The research on mediation mainly focuses on the structural organization of this talk and neglects the social epistemology aspect of it and how it is linked to the micro level of interaction.

How the mediator manages disagreement and frames conflict in a particular way through the use of language is a puzzle that will be addressed in this study. The focus of the research is on mediators' moves and the construction of on-task and off-task as the performance of an institutional role and a particular meta-performance in directing the interaction. In other words, the interest here is the struggle of the mediator as a designer of a specific form of interactivity not just over the policy to be created and implemented but over the conversation constructing the policy. One way to figure out this puzzle is to look at what participants, the mediator in particular, make explicit in the course of their deliberation, when they are doing mediation and when they are not. In the next chapter, I will describe the data and the procedures I used for conducting the project.

CHAPTER 3

METHOD

This chapter describes the setting where the interactional data were collected, the type of data that was used for conducting the study, the methods that were employed to analyze the data, and what the data from these sessions will enable me to do in terms of the research questions at hand. The purpose of this chapter is to give a general description of method. Chapters 4-8 will focus on specific analyses relevant to the questions they explore and will further specify the methods used for the analysis reported in that chapter.

An existing collection of transcripts from audio recordings of mediation sessions at a mediation center in the western United States served as a source of interactional data. The focus of observation is primarily on the mediators' moves as these moves are informative about the shifts in the ongoing quality of the interaction. Different features of the entire corpus are used to establish some baselines from which I as an analyst can make some judgments about what to look at more closely and what to compare. The method is used to develop the local interactional context of mediators' moves to get the sense of overall interaction.

The next section will briefly describe what mediation is and what are specifics of the mediation sessions where recordings were made.

Source of Data

The transcripts for this study are from sessions held in a public divorce mediation program connected with a court where the judge approves the decision (Donohue, 1991; Pearson & Thoennes, 1984). The recordings of the sessions were made at different branches of the Los Angeles County Family Mediation and Conciliation Court by Dr.

Jessica Pearson. The findings of that project aiming at evaluating mediation programs across the country were described in Pearson and Thoennes (1984). The transcripts used in the present study were made by Deborah Weider-Hatfield for Dr. William Donahue's project on communication practices in divorce mediation (Donahue, 1991). These transcripts were made available to me by Dr. Scott Jacobs. The transcription of the audiotapes followed the scheme developed for conversation analysis and outlined in Schenkein (1978). The transcripts include interruptions, overlaps, and pauses. This format, however, differs in the degree of details from the more advanced way of transcribing that conversation analysts use nowadays. For example, there is no information about how long pauses are. Due to the absence of audiotapes, there was no chance to update these transcripts according to the more current version. Given the actual nature of the data, it is not possible to capture all the aspects of interaction (e.g., participants' nonverbal actions) that can affect how the interaction unfolds. However, these data make it possible to analyze participants' language behavior and interactional resources (e.g., turns, who makes them, references) they use to shape the process of deliberation. Another limitation of these data is the lack of record of what sessions each mediator conducted, as it would be interesting to find out routine practices each mediator uses. These data, however, are sufficient for discovering general and recurrent features across the transcripts.

The participants in the mediation sessions are couples going through a divorce or divorced couples (re)negotiating their divorce decrees. Each session involves one mediator. On the whole, eight different mediators conducted 18 sessions with 17 couples. The mediation sessions are mandatory for participants, and if the parties cannot reach a

settlement they can opt to go to court to resolve their dispute. The participants can also choose to have more than one session. All cases under study except one lasted one session. The mediation sessions took place two hours prior to the court hearings. The length of sessions varied but in the majority of cases it was about two hours. The sessions were held in the mediator's office or a conference room in the court building. The disputants were usually seated side by side at some distance from each other.

The mediation sessions are set up for the divorced or divorcing couple to develop arrangements for child care such as child custody, visitation rules, and support. Couples are free to take the initiative, put forward proposals, and make decisions. The role of the mediator in these sessions is to help participants create or modify a child custody arrangement that would be best for their child. At the beginning of the session, the mediator usually briefly explains to the disputants what the conciliation court is, what the mediator's job is, why the disputants are attending the session, what they have to achieve in the course of the session (e.g., to create a plan for their child or children), what other options they have to deal with their situation, and how the meeting will unfold. Then the participants proceed to the discussion of the issue at hand. Occasionally, the mediator asks to talk to each disputant separately. The mediator leads the discussion in the way that helps each party voice their position and manages troubles in reaching an agreement. Mediators are expected to be objective and not to take sides, except acting in the interest of the child who is not present.

The mediation sessions provide a reasonable context for study as these data are useful for understanding how participants use interactional tools (vocabulary, turn design, sequence organization, overall structural organization, and social epistemology and social

relations) to determine a prudent course of action to deal with their conflict, how they use disagreement space to shape their deliberation, how they do this in the circumstances of constraints that the interaction order and the institutional order impose, how they coordinate their actions and how shifts in dialogue happen, how disagreements emerge, and how participants manage them. This will be accomplished by looking at what participants of mediation sessions make explicit and available in their interaction, for example, references they make, topics they initiate and build up, things that do not get developed as the interaction unfolds, and lexical choices they make to describe things. These things are important to look at as, on the one hand, they are specific for different types of talk, and, on the other hand, they let us see how participants orient to what is going on in the discussion.

Data Interpretation and Analysis Plan

For this project, the main focus of observation is on mediator communicative practices for keeping the interaction relevant to the task at hand. These include the word choices of mediators and language actions. The interest in mediators' moves, how these moves construct the interactivity as being on task or off task also entails understanding the local context of their production. As Schegloff (1972) states, "*participants* analyse context and use the product of their analysis in producing their interaction. To say that *interaction* is context-sensitive is to say that *interactants* are context-sensitive" (p.115). Thus, the center of attention is also the different linguistic and interactional material from the corpus of transcripts (e.g., the number of contributions, who makes them, references) that can be used to contextualize the mediator's moves. It is important to attend to linguistic and interactional resources used to construct on task/off task modes of interaction as the

dialogue quality is a mutual achievement of all the participants not just the mediator. These resources are also used to shape the disagreement space.

This analysis reveals different features of mediation as a type of institutional talk, how formal or informal this talk is, how disagreement space is constructed and used (Drew & Heritage, 1992; van Eemeren et al., 1993; Walton, 1998). The following approach was developed to describe the interaction for analysis and interpretation. First, I will explain the key concepts that are relevant for the task at hand, namely, *the flow of activity*, *the topic*, *the state of mutual attention and focus*, *on-task/off-task modes* of interaction. Next, I will describe procedural steps I took to study each transcript, which are creating a map of each session and making sense of it with help of a grounded approach. Finally, I will describe categories that emerged from studying the overall corpus of transcripts and guided the selection of specific examples for detailed analysis.

Key Terms of the Approach

It is important to have a sense of each mediation session to get an idea of the flow of interaction and shifts in topics and dialogue activities. It is helpful for understanding where each discussion goes and for developing a grounded description of dialogue activity and topic and, in particular, states of mutual attention and focus among the participants and on-task/off-task modes of interaction.

Following Levinson's notion of activity type (1992), an activity is defined as "goal-defined, socially constituted, bounded events with constraints on participants, setting, and so on, but above all on the kinds of allowable contributions" (p. 69). In this respect, a mediation session is understood as a kind of activity.

A dialogue activity is a goal-oriented verbal exchange between the parties according to some rules and with constraints on participation and allowable contributions (Levinson, 1992; Walton, 2000). By the *cohesion of dialogue activity* I understand the connection of each contribution a participant makes with previous and subsequent contributions of other participants to build up this activity. It is important as how actions are understood depends on how they are positioned (Drew & Heritage, 1992). Describing the flow of activity is helpful for identifying participants' contributions, who makes what contribution, when, how often and in what context, what things get picked up, what participants are doing, what is the potential for disagreement, and how participants manage it.

The topic is understood as a subject participants talk about, and the cohesion of topic is defined as the connection of participants' contributions to create a coherent line of discussion on the same subject (Schegloff, 1990). It makes it possible to see what topics get more attention in the discussion and what topics are institutionally preferred for mediation sessions and which are to be avoided.

I use the term *the state of mutual attention and focus* in regard to occasions when participants are engaged in the same dialogue activity and orient to the same subject or issue. The joint focus of attention is an important precondition for "the sustained, intimate coordination of action, whether in support of closely collaborative tasks or as a means of accommodating closely adjacent ones" (Goffman, 1983, p. 3). Thus, taking into consideration the mutual focus is helpful for analyzing how participants collaboratively construct the interactivity.

The state of mutual attention and focus is different from being on-task, although these two states may coincide when participants' focus of attention is on the matters relevant to the institutional goal of interaction. At the same time, participants may be jointly constructing the dialogue activity or discuss topics that are not institutionally sanctioned. In this case, the state of mutual attention is not the same as being on-task. In this respect, it is possible to differentiate between two modes of activity: *on-task* and *off-task*. Being on-task is understood as contributing to the construction of an institutionally preferred form of interactivity (e.g., discussing institutionally preferred types of topics and engaging in institutionally appropriate dialogue activities). Conversely, when the participants do not contribute to the goal of the interaction, they are acting off-task.

Examining the whole transcript makes it possible to observe when the talk shifts in topic and dialogue activity. Things participants bring into interaction reveal how the talk becomes unfocused from the institutional task at hand and to reveal the tensions between the institutional preferences for interaction and preferences that people carry out in this interaction (Drew & Heritage, 1992; Goffman, 1967, 1983). For example, the opening speech by the mediator, sanctioning interactional behavior or pointing out the deviation from the main point of the meeting can serve as evidence of institutional talk afoot. At the same time, participants can bring things that may seem not relevant for the institutionally sanctioned task. The mediation session, although it is considered to be an institutional setting, is not as strict as, say, a courtroom interaction. Thus, participants have to work out what is institutionally relevant in the course of interaction itself.

In other words, studying each transcript makes it clear how participants engage with each other, how their contributions make matters more or less relevant in the

discussion, how they coordinate what they are doing, and how they create or diminish possibilities for the next move, regardless of whether it is done intentionally or unintentionally. I examine how a certain form of interactivity is constructed through language behavior/actions. All this helps to set the stage for a closer analysis of linguistic tokens and moves associated with these states and transitions and, thus, to make it possible to discover patterns of language behavior across all the transcripts. This discovery is to help provide grounds to explain how the process of deliberation is created in the context of conflict when institutional constraints are imposed on the interaction.

Steps in the Approach

Now I will turn to how I approached dispute mediation in a more procedural sense. I took two co-occurring and repeating steps in analyzing transcripts, namely, describing and interpreting. Reconstructing the instances of discussion made it possible to see patterns that provide grounds for examining how participants employ what is available in the interaction to construct their deliberation in the context of mediation talk. The focus was on what participants bring into the discussion and what they leave out in the course of interaction, and how it is done by their practical use of language. I started with what transcripts most objectively offer, and then I built descriptions that offer insight into patterns and implicit aspects of interaction from these mediation sessions. The description and interpretation were used in reflecting on communication as it relates to shaping deliberation.

At the first stage, I studied each transcript and outlined the overall flow of the discussion from start to finish. Quite often it is not enough to look only at the local context, that is, contributions that are positioned in immediate proximity in respect to

each other, but it is necessary to get a sense of what is going in the interaction in general, as what participants are doing may not be a local action but some larger project they are pursuing.

First of all, I developed a grounded description of each mediation session. I created a map of each session in the form of an excel file with a separate spreadsheet for each transcript. It is important to have a digital copy of the file rather than an analog one as it makes it possible to make a simple statistical analysis, for example, how many contributions each participant made and word count. I put contributions in a sequential order and then created excel tags for each one. As it was mentioned above, any type of interaction differs from others on a number of dimensions (e.g., vocabulary, turn design) (Drew & Heritage, 1992). That is why series of columns in the spreadsheet reflect who was responsible for each contribution, who participants addressed and the token they used to do that, references participants made during the interaction and their tokens, topics that emerged, and what move a participant performed. All these things are important as they are material for constructing mediation talk and provide a benchmark for future analyses.

The second stage is analytical. As far as an interpretive part of the study is concerned, I took a modified grounded theory approach (Strauss & Corbin, 1990). Although I started with some research questions in mind, different categories emerged for analysis through the constant comparing and contrasting of the data, that is, segments of interaction in this particular case. This approach is more valid for an exploratory purpose, although ideas and concepts from institutional and argumentation perspectives served as general guidelines. It lets the researcher be open to what is going on in the interaction and

notice many things that otherwise would be neglected. The internal comparison of the data made it possible to discover patterns and to see how these pieces (i.e., categories and patterns) form a bigger picture.

On the whole, I examined 18 transcripts. The entire set of transcripts consists of 395 pages. The conversations that the mediator had with each participant separately are not included in these transcripts. Although one transcript can provide with rich material and reveal certain patterns of language behavior, they still can be specific for a particular interaction. Studying a variety of transcripts makes it possible to draw generalizations about the phenomena in question across different discussions. As mediation is a form of institutional talk with specific characteristics that are recurrent and pervasive across interactions (Drew & Heritage, 1992), studying the whole corpus of transcripts is necessary for understanding how the process of deliberation is organized in this particular type of interaction. It is informative about different aspects of this institutional talk and the link between the micro level of interaction and reasoning.

In this section I have described how I approached the analysis of transcripts. Next, I will focus on categories that emerged from studying transcripts of two mediation sessions.

Baseline Categories

In the course of a closer examination of the overall corpus of transcripts, a number of categories, which are relevant for the issue under study, have arisen. These include contributions made by participants, references to people, the immediate situation, the interactional products, external matters and internal states, and the higher order units such as topics and dialogue activities. Some of these categories and sub-categories (e.g.,

the producer of the turn) are quite straightforward and consist of one or a few items, whereas others (e.g., references to external matters) have a larger number of items. Although these categories and sub-categories vary, what is of importance here is that all these things are resources for creating mediation talk and the process of deliberation.

Phenomenon 1: Contributions made by participants. The most basic phenomenon to look at is contributions that participants make in the course of interaction. Each contribution is equivalent to one turn produced by a speaker. The two categories that are related to this phenomenon are who produces the turn and who is the primary recipient of it. The distinction between the primary and other recipients is made following Goffman's (1981) types of recipients such as ratified (addressed and unaddressed) and unratified (over-hearers or bystanders and eavesdroppers). All the participants of a mediation session are ratified recipients with the primary recipient being the one who is addressed by the speaker and who is expected to produce the next turn.

Codes: The producer of the turn and the recipient of the turn. The first category *the producer of the turn* consists of 3 items that appear in the data set, namely, H – husband or ex-husband, W – wife or ex-wife, and M – a mediator. As for the primary recipient, it can be one of the participants (e.g., H), or a combination of participants (e.g., the mediator and one of the spouses or the couple) (see Table 1.1). Speakers can address their primary recipients explicitly (e.g., "Patrick", "Mrs. Lewis", "the two of you", "each of you") or implicitly (excerpts NR3:113 and NR3:33 respectively).

Excerpt NR3:113

113M: [Mrs. Lewis], you have just done what you've accused him of doing

Excerpt NR3:33

33M: OK, um, ((Pause)) then you're saying you want the children to go school in your

            area

34   ((Pause))

35H: Sure because the reason why is because I can afford a private school for them.

        In the latter case, the local context is of help to identify the recipient. For

example, it can be clear from the previous or the following turn who has been addressed.

This can be seen in excerpt NR3:33, where it is obvious that H addresses M as he

provides a conditionally relevant turn, that is, the response to M's question. Also, other

words in the same turn can signal that. For instance, when the pronoun *you* is followed by

the token *one another*, it is clear that the mediator addressed both parties.

        These two categories, who produces the turn and who the speaker addresses, are

important for understanding the participation status and recipient roles. It is also essential

for examining who makes what moves, how often, when, and in respect to what, so to

speak, it is essential for analyzing the flow of interactivity. The participation status draws

on the concept introduced by Goffman (1981) who has a more expanded notion of

participation status that will be explored as data is interpreted.

        Pattern identification. Based on these simple categories, I identified some patterns

in terms of contributions each party made. Specifically, I studied for each session how

many contributions each party made to initiate a topic and dialogue activity.

        Pattern interpretation. All these patterns are important to examine as they make it

possible to build toward more abstract concepts. For instance, they are informative for

understanding how participants construct their roles in the institutional setting (e.g., the

clients versus the mediator) and the tension between the interaction order and the

institutional order. The mediator is a representative of the conciliation court and has a

certain authority in this interaction. S/he is the one who is supposed to lead the

discussion and to help the (ex)-couple to resolve their problem. Their contributions in

terms of initiating dialogue activities and topics differ from the ones of the disputants in

terms of the frequency and the type, which will be discussed later.

Phenomenon 2: Types of references. Another phenomenon to consider is what

participants refer to in their contributions. These references can be of different types:

references to people, to the immediate situation, to interactional products, to external and

internal aspects. They are essentially all the things that parties bring into the discussion.

It is important to note referencing terms as they help to see how the participants

make context as part of their talk. The references make it possible to identify the aspects

of the world participants bring into their conversation and which of them become topics

of further discussion and to identify the content they are coordinating the interaction on.

These references are also helpful for identifying the kinds of linguistic tokens participants

use, and how the uses of them differ across the discussion. All this is essential for

registering the cohesion of topics, mutual focus of the participants, and shifts in talk. All

the things mentioned above are related to different types of references, although each

type may have its specificity. Now I will consider each type individually.

Codes: References to people in/ people out of the immediate situation. First of all,

participants can refer to different people who fall into two subcategories: people in the

immediate situation (i.e., participants who are not primary recipients of the turn) and

people outside the immediate situation (e.g., children, extended family members,

neighbors). Table 1.2 provides an example of the references that were made to people and

tokens that were used to make them from one mediation session. For instance, in excerpt NR3:49 "she" is a reference to people in the situation, W in this particular case, and "mother" is an example of the reference to people outside the situation.

Excerpt NR3:49

49M: Well, I would think there's some holidays [she

50H: [No they're Jehovah's Witnesses and

         she doesn't practice it but her mother does and there's no Christmas or Easter or

         birthdays.

These references and the tokens are important to note because the way contributions are designed can highlight or hide conflict or some other aspects of interaction and states of being. In particular, references to people can shed light on relationships participants have with each other and with people outside the mediation session in progress.

Pattern identification. In terms of identifying patterns in these two categories, I was looking at who refers to whom in this interaction, what tokens are used and how they differ across the discussion. For example, Table 1.3 gives an idea of who was referred in one particular session. The husband was the one who made most references (41) with a greater variation of type (children, extended family members, close acquaintances, neighbors, a baby-sitter, witnesses, and lawyers), with the majority of them to the children and neighbors. The wife made the fewest references on a whole (17) to the children, extended family members, close acquaintances, witnesses, and neighbors. The mediator's references are to the couple's children, the judge, the lawyers, and psychiatrist/psychologist.

Pattern interpretation. These patterns are important to consider as they can shed light on how the parties coordinate their actions, construct and manage disagreement, and be indicators of on-task/off-task modes and tensions between the institutional and interaction orders. For example, the references that the mediator brought into the discussion (the judge, attorneys, psychiatrist/ psychologist) are references to agents of an organization that can be, in some way, related to the process of resolving a dispute. Most of these are references to other aspects of the legal process and are introduced as "threats" to the participants losing control over their dispute and it being turned over to others. The mediator makes these references to frame interaction as an institutional encounter and bring the conversation back on track. These patterns suggest places to look for collaboration, as word frequency is potentially a sign of mutual attention.

Tokens participants use to make their references are also important for analysis. For example, they can provide grounds for analyzing how the conflict and disagreement are constructed. The way (ex)-spouses talk about children can be evidence of their opposition. When they bring them into the discussion, they use the pronouns *my*, *your* rather than *our* referring to the mutual children as it can be seen in excerpts NR3:133 and 200:16 (e.g., "I'm gonna get my son back", "she pushed my son", "she told the police that my son had cigarette burns all over his body" (excerpt 200:16), "Yes I am too thinking of my children's best interest", "That's what my son said your son", "your six year old son" (excerpt NR3:133).

Excerpt NR3:133

133W: Well you're not (   ) the children's best interest=

134H: =Yes I am too thinking of my children's best [interest

135W: [No you arent' because I would

      never do that to you [wh-I'm see you're just] unreasonable=

136H: [wha going to talk about it]

137W: =totally [(   )

138H: [totally unreasonable

139W: I would never take your kids away from you I couldn't do that the kids love

      you [I mean the kids]

140H: [Trudy I can't]   you know what Scott told me, do you know what

      Scott told me at the table the other [night

141W: [Uh] the kids=

142H: =he told me, he says why don't we get away from Trudy why don't we get as

      far away from Trudy as we can. That's what my son said your son.

143W: I uh, I [never try to hurt you like that]

144H: [your six year old son   ] =

Excerpt 200:16

16W: And I'm gonna get my son back because we both have custody. Then there's

      (   ) (one of us), and I just couldn't get Andrew back,

      [and] I guess it worries me that the same

17M: [Mhm]

18W: =thing's gonna happen (but) the divorce isn't (through)

19H: the reason (   ) (she) (   ) the reason that I had my son ((PAUSE)) is I,

      was walking out the door to cool off, and she pushed my son out the door and

      said, you take him with you and that's exactly what I did

20M: Well did [you take t]hat to [   ] but did you take=

21H: [If I told   ]   [w-yeah]

22M: =that to mean, from now on?

((6 turns omitted))

29H: [She did bring   she did   ] bring the police with her, down

        around, because she told the police that my son had cigarette burns all over his

        body. I brought my son downstairs, undressed him, police officer looked at

        him, she said now see what he's doing, I (I brought him up, ( ), policeman told

        her

        Here, the usage of personal pronouns indicates that the husband and the wife see

themselves as separate units. As the pronoun *my* implies individual possessions, by

employing it, disputants exclude the other parent and show that they have more rights on

the child than the other one. At a more macro level of analysis I will look at what

references and tokens across transcripts are used for constructing conflict talk.

        Codes: References to the immediate situation. References can be made to the

situation itself, that is, participants are involved in the talk about the mediation session,

dialogue activities they take part in, rules and violations of them. For example, in excerpt

200:63 the mediator has realized that he, and possibly the (ex)-wife, too, misunderstood

what the (ex)-husband had said previously, and the following episode is centered around

clearing up this misunderstanding. The (ex)-husband and the mediator are engaged in the

discussion, where the (ex)-husband tries to explain what he really meant when he

expressed his position on visitation.

Excerpt 200:63

63H: I agree with what you say but uh, I'm not going to sign a contract (   ) the

two days, a month, that would be fine ((PAUSE)) but ((PAUSE)) I can only

come up on the weekend, if I can come up at all

64M: Well that [isn't what I tho]ught I heard you say a=

65H: [So, it's   ]

66M: =little while ago=

67H: =I said

68M: Sometimes=

69H: =I said if I can come up at all on the weekends but not all the time because

sometimes jobs like that, it may be being done on the weekend. What I want is

the assurance that I can se[e   ] if I go up there

70M: [Okay] Well it, I thought I heard you s-

in[di]cating that sometimes it would=

71H: [No]

72M: =have to be on, uh other, other [than] weekends.

73H: [(   )]

74   ((PAUSE))

75M: [[Is that, w]hat you think=

76H: [[(   )]   =yeah sometimes I work seven da[ys   ]

77M: [Yeah], okay, but do you

[see,] look, [let me=]

78H: [Yeah]   [yeah   ]

79M: =let me just, point out to you ((PAUSE)) uh, in a matter of communication, of

       things, both she and I thought you said something else. You you, tell us you

       didn't say that, and I'll accept that you didn't, but it's very possible for

       misunderstandings to come because, [   ] something is=

80H: [Mhm]

81M: =said in a way that isn't clear

82H: See what in the latter part what I said, is that, as long as I have the assurance,

       that I could see hi, because, if it's the second say it's uh the first and third

       weekend ((PAUSE)) and I call Mary and say to her well look, I'm sorry I can't

       make it this weekend 'cause I've got to work. At least I have the assurance that,

       if I was (   ).

Instances of references to the immediate situation are of interest as they can be helpful in identifying points where the institutional order is being enforced or challenged, as well as where the participants' sense of the activity they engage in becomes an explicit part of the talk.

Pattern identification. As with the categories discussed above, I looked at who brings this matters into the interaction, how often they do this, where it occurs in the course of interaction, and how it is framed.

Pattern interpretation. Patterns related to references to the situation are important for this study as they might serve as an indicator of topic or dialogue shifts which in turn may be a sign of how the institutional order and interaction come into conflict, what is considered inappropriate or problematic in the course of interaction from the viewpoint of different parties, and how disagreement is managed.

Excerpt NR3:69 is an example where the mediator initiates metatalk.

Excerpt NR3:69

69M: Let's hear what, what your plan would be

70W: Yeah I'd like the kids to live with me, and uh uh I'm presently living in a house

      that we jointly own it's in the valley

71H: which she can't keep the payments up cause she doesn't have a job

72M: OK wait wait I think you have to be quiet

73H: =ok=

74M: and let her talk about the plan that she's thinking of

75W: OK and I have to sell the house because, um, since my husband moved out he

      hasn't paid any of the payments=

76H: [=Right, right   ]

77W: [We got, we got] the house ok he's paid

      [one payment and half another payment]

78M: [OK Wait wait wait wait   ] let's not talk about the house and let's

      not talk about money right now because I know that you're in the early stages

      of your divorce and your residences may change because of financial situations

      and everything

79W: ((cough cough))

80M: but let's talk about the children being with you and living with him wh what do

      you propose in terms of the children's time with each of the two parents

The former wife and husband are supposed to discuss the place of living of their

children. However, the wife shifts away from the topic and starts talking about financial

problems. The mediator treats it as inappropriate and makes moves to refocus the discussion, pointing out what should be talked about and what should not be. The mediator has to keep parties focused on the problems that need to be resolved. In this respect, in the given example the participants' attempts to talk about side issues violate the rules and goal of the discussion and are in conflict with the institutional order that the mediator is to reinforce.

Codes: References to the interactional product. One more aspect interactants refer to is the interactional products to be created (e.g., *plan*, *agreement*, *contract*). As any type of institutional talk, mediation talk has its own goal that is not necessary a goal of each individual participant of this interaction. Reaching some agreement on child custody is the reason for participants to engage in this particular type of interaction in this specific setting. Thus, references to the interactional products can be a feature of this form of institutional talk and be indicators of being on-task. For example, in excerpt NR3:5 the mediator centers the talk around creating a plan, which is the primary goal of the meeting.

Excerpt NR3:5

5M: =that would probably be very painful to you, but if we can lay (come) these
            emotions aside for a moment and see if if we can come up with some plan. Let's
            see if we can do that.

As in cases of references to people and the immediate situation, this type of reference is important for analysis, as it can be relevant to revealing instances of the tension between the institutional order and the interaction order and indicating being on-task or off-task.

Pattern identification. Patterns to identify in this category are who brings these aspects into interaction and how often, and when it occurs. This is an indicator of who makes this institutional aspect of talk available. Another pattern to look at whether this interactional product becomes an object of focus for the discussion, and if it does, then how it happens.

Pattern interpretation. Patterns of references to the interactional products can be of help for understanding the tension between the interaction order and the institutional order. As in case of references to the immediate situation, the mediator can use references of this type to enforce the institutional order.

Finally, participants make relevant for the discussion different types of things that can be divided into two categories: external matters and internal states. These references are informative about what aspects of world participants make available for the discussion and how they become the context of the interaction.

Codes: References to external matters. In the course of sessions, parties mention different places (e.g., places of their living and those of other people, cities or states where they are going to move, and the location of their children's school), various things (e.g., work schedule, one's job), events (e.g., celebrating holidays, going to church, someone's transgressions), and state of affairs (e.g., being jobless, financial issues). For instance, in excerpt 200:62 W makes a reference to a possible future situation (namely, her job and schedule) that has to be taken into consideration in creating an agreement, whereas in excerpt NR3:17 the location of the ex-spouses is made relevant for the conversation.

Excerpt 200:62

62W: Well I don't know exactly which days, I don't know if I'm gonna get the job I

        don't know what my schedule's gonna be and I go to school nine to twelve

        Monday through [Friday   ]

Excerpt NR3:17

17M: = I think we need to think of uh that more specifically rather than leaving it to

        chance because the two of you haven't functioned very well by leaving it to

        chance. So if we think about it, um, ah, presently do you live pretty close to one

         another?

18W: [[No, not really   ]]

19H: [[Uh, its not that far]]

        All these references are important to note as they create the context for this

interaction and can be called on and become grounds for disagreement, conflict, strategic

behavior, as well as for the rationales for a participant's position or ways to defuse a

position of another party.

        Pattern identification. Based on these references, I identified patterns of who

brings what into the discussion, how these references are worded, what gets taken on by

other parties, and what consequences can be for the discussion.

        Pattern interpretation. The references to external matters are essential as they can

provide insight into the cohesion of dialogue activities and of topics, the construction of

disagreement space, conflict emergence, disagreement management, and shifts in the

dialogue activity and topic.

        The following example illustrates how I proceeded with my analysis based on this

kind of references.

Excerpt NR3:53

53M: OK. Mrs. (   ) let's hear from you, what kind of plan do you think that we

       could reach (   )

54W: Well um I'd like for them to live a normal (   )

55H: What's normal, cocaine addict uh uh (argue) a patient, outpatient [uh uh uh=

56W: [My (   )

57H: =oh and and uh uh trick every night?

58W: people

59H: Is that, Is that it, Is that it?

60W: I don't under[stand]

61H: [she had] a 15 year old kid coming over and staying the day while

       these kids were locked up in the front yard while I was at work every day,

       have a witness proof for that

62M: OK=

63W: =you do, who

64H: Meg White.

65M: Let=

66H: =she was the one who told me about it all

67M: Let's [hear

68H: ['Cause her 15 year old son

69M: Let's hear what, what your plan would be

70W: Yeah I'd like the kids to live with me, and uh uh I'm presently living in a house

       that we jointly own it's in the valley

In excerpt NR3:53 the mediator asks the wife to share her suggestions about child care. When she starts expressing her position, the husband uses a personal attack implying that she is not leading a normal life. The wife pointed out that she would like a normal life for her children. However, the husband questioned what is considered to be normal and shifted the discussion to his wife's style of life. He brought in the references to such things as "cocaine addict", "patient", "outpatient", "trick", which have some negative meaning and are usually associated with deviation from the norm. Of course, the words *patient* and *outpatient* do not necessarily carry negativity in terms of personality traits. However, if being healthy is taken as a norm and a positive thing, then being a patient (i.e., being ill) is a deviation from it and is negative. On the other hand, taking into consideration the surroundings of these words (e.g., the adjacency of the phrase *cocaine addict*), the matter is likely to concern health issues that are connected with a person's pernicious habits (e.g., taking drugs) or probably a mental state, which, in this case, is related to personal characteristics. In the given context, the husband's references to negative things pointed out that the wife's style of life involved things that are publicly frowned upon and, thus, undermined the image of the mother as a person who could provide a normal (i.e., socially accepted) life for children. The wife challenged that accusation saying that she did not understand what the husband was talking about. In his turn, he brought into the conversation some past event as an example of his wife's immoral behavior, which drifted the discussion even further away.

Thus, the husband's attack and the wife's reaction to it shifted the dispute from its primary aim, and the mediator had to interfere in a number of turns to bring interaction back to the main point.

Codes: References to internal states. Another category that is made available in the discussion is references to internal states such as emotions, feelings, intentions, and motivation. For example, in excerpt 200:44 the wife brings into the discussion her feelings, stating that she does not trust her husband and in this way trying to justify her position.

Excerpt 200:44

44W: I don't want to sit here and argue the only thing I was trying to say is, I don't, I

really don't trust him for the whole (   ) stuff, I would have it, I would like

to have it where he could go over to my babysitters (   ), or else I could be

there, [(   )]

As in case of references to external matters, references of this type are an integral part of building the context of the discussion and constructing disagreement space.

Pattern identification. The patterns to examine under this category are who makes this type of references, what tokens are used, what gets dropped and what is incorporated in the further discussion, and how it affects the flow of interaction.

Pattern interpretation. Along with patterns of references to external matters, these patterns are important for identifying points of mutual attention of participants and breakdowns of it, instances of strategic behavior, and shifts in the discussion.

Excerpt NR3:128 is an example of how contributions participants make lead to a dialectical shift in the discussion.

Excerpt NR3:128

128M: Are you pretty locked into your position?

129W: As far as what? ha ha I don't want him to take the children out of state, no, ha.

130M: Are you very sum set on going out of state=

131H: =Yes I am

132   ((Pause))

133W: Well you're not (   ) the children's best interest=

134H: =Yes I am too thinking of my children's best [interest

135W: [No you arent' because I would

          never do that to you [wh-I'm see you're just   ] unreasonable=

136H: [wha going to talk about it]

137W: =totally   [(   )

138H: [totally unreasonable

139W: I would never take your kids away from you I couldn't do that the kids love

          you [I mean the kids]

139H: [Trudy I can't]   you know what Scott told me, do you know what

          Scott told me at the table the other [night

140W: [Uh] the kids=

141H: =he told me, he says why don't we get away from Trudy why don't we get as

          far away from Trudy as we can. That's what my son said your son.

142W: I uh, I [never try to hurt you like that]

143H: [your six year old son   ] =

     In this example the participants engage in the conversation about their positions.

W states that she does not want H to take their children away to some other state,

revealing her own wishes rather than concern for the children. When H, in response to

M's question, confirms his determination to move out of state, W brings into the dispute

the children's interests and accuses H of acting not to their best advantage. She depicts him as a bad father as it is parents' duty to care about his/her children. At the same time, judging by H's reaction "I'm too thinking of my children's interest", her move implies that she is the one who is concerned about the children. W opposes H's disagreement with the accusation. A shift in the dialogue activity happens in the direction of the issue of being reasonable. W commits another personal attack at H's sensibility, or rather lack of it, which H counteracts.

These simple categories are useful for getting at high order concepts. According to Schegloff (1972) "the topic or activity being done in the conversation at that point in its course, and which is, at least in part, constituted as "that topic" or "that activity" by the formulation selected to realize it" (p. 115). The actions participants perform, dialogue activities they engage in, and topics they discuss can be discovered through these categories and the context they occur in.

Phenomenon 3: Subject matter of the discussion. One of the high order concepts that are relevant for this study is what participants talk about in the course of the mediation session, that is, a topic. A topic is a segment of talk that is constructed around one subject, or theme, e.g., visitation time. In this respect, references can serve as indicators that participants focus on the same topic.

Codes: Topics. As the primary aim of dispute mediation is the arrangements for children, the institutionally relevant topics that arise during this discussion can be visitation rights, the location of parents, the location and a kind of school, children's interests, psychiatrical evaluation of parents, a plan. However, the participants do not keep focused on these matters all the time. For example, in the course of one mediation

session participants raised a number of other issues such as holidays and religious beliefs, the style of life and behavior, financial issues, rules of conduct during the session, emotional conditions and feelings of parents, unreasonableness, parents' mental state, children's attitude towards parents, past events, honesty that altogether constitute the whole web of issues that can affect the deliberation process and make it difficult to find a solution.

Topics are important to study as they can provide insight into how the interaction unfolds and can serve as an example of enforcement of the institution, they can be indicators of being on-task and can be used to control the development of the discussion.

Pattern identification. Patterns to identify are who initiates the topic, what topics get more attention, what topics are considered inappropriate from the vantage point of interactants, and how the topic gets developed. These patterns are related to the codes and patterns of lower order, namely, references that participants make as different references may be indicators of different topics.

The discussion does not develop in the linear direction, the participants initiate and drop topics and address them again later on. Some topics are developed over a number of turns, whereas others are touched upon just in one or two. For example, in excerpt NR3:191 H brings in the issue of W's style of life, which she challenges in her next turn. However, H drops this subject and raises a question of W's mental state instead, which becomes the focus of the further discussion.

Excerpt NR3:191

191H: [No oh,   I know] it. But,

on the same thing, I don't feel that it's right for her to be carrying on the way

she does, and with the children see what's going on I don't think [that's good   ]

192W: [Carry on how.]

I've not been [seeing any body

193H: [Oh, God, I forget. If you're going to end up in a mental

hospital=

194W: =Nick=

195H: =and your mom has to watch the kids=

196W: [[=I was emotionally upset because you have the=

In this example, the first topic is touched upon only in two turns, whereas the other one gets developed over a number of exchanges.

Sometimes topics become interwoven as participants focus on different subjects. For example, in excerpt NR3:139 H and W lead parallel discussions.

Excerpt NR3:139

139W: I would never take your kids away from you I couldn't do that the kids love

you [I mean the kids]

140H: [Trudy I can't   ] you know what Scott told me, do you know what Scott

told me at the table the other [night

141W: [Uh the kids=

142H: =he told me, he says why don't we get away from Trudy why don't we get as

far away from Trudy as we can.   That's what my son said your son.

143W: I uh, I [never try to hurt you like that]

144H: [your six year old son   ] =

145W: =I never tr[y (   ) I never tried

146H: [Oh, yeah you try to hurt me [with a 15]-year-old affair, with the

        drugs, =

147W: [I never   ]

148H: =with the anal sex, with all this other bullshit. I don't care about hearing it

        leave me alone that's all I want I want you to leave me and these [poor kids   ]

        alone.

149W: [You should]

        just forget it.

150H: This is what she [does

151W: [I (disbelieve you) uh all your bitterness and animosity you

        know I don't feel any animosity toward you [I wh   ]

152H: [Oh sure] you don't that then

        why'd you treat me that way for six years [   ]   you had an affair with=

153W: [I don't]

154H: =my brother, you had an affair with the 15-year-old next door why do [you

        treat=

    In turns 140, 142, 144 H brings in the matter of the children's attitude towards

their mother and then in turns 146, 148, 152, 154 moves on to some past event featuring

her transgression. At the same time W focuses on feelings (turns 143, 145, 147, 151). The

participants may seem talking about the interrelated issue but, in fact, they address

different aspects. In this case, 3 different topics will be coded.

    Pattern interpretation. Patterns related to topics are important for revealing the

tension between the institutional order and the interaction order and indicating being on-

task and off-task. Mediators can enforce the institutional order by intervening into the discussion and pointing out that the issues raised by other parties are not appropriate for the given situation. For example, in excerpt NR3:69 discussed above the ex-spouses shifted away from the discussion about the plan and focused on financial issues. The mediator interfered and drew the attention of the participants to the fact that this topic was irrelevant. Focusing on topics also sheds light on the construction of disagreement space. By introducing institutionally appropriate topics and terminating irrelevant ones, the mediator shapes the disagreement space and, to a certain degree, controls what can become arguable.

Phenomenon 4: Dialogue activity. Another high order concept that is of interest for this study is dialogue activities the participants engage in during the mediation session. A dialogue activity is a segment of talk that is constructed around one goal, e.g., gathering information. Any dialogue activities imposes constraints on allowable contributions. In this respect, participants' moves can serve as indicators of what dialogue activity takes place.

Codes: Dialogue activity. Dispute mediation as a type of institutional talk carries its institutional preferences for appropriate dialogue activities. The institutionally relevant dialogue activities can be, for example, information gathering, explaining, negotiating, that is, dialogue activities that contribute to achieving the goal of mediation sessions. However, the disputants may initiate dialogue activities that shift the direction of the discussion away from the main task, for example, by having an argument.

Dialogue activities are important to study as they illuminate how the process of deliberation is constructed, what is treated as on-task and off-task, and how the institutional order is enforced in the course of the mediation session.

Pattern identification. Patterns to identify are who initiates dialogue activities and what kind, what dialogue activities are treated as appropriate and inappropriate for the mediation sessions.

Pattern interpretation. Similar to topic patterns, patterns related to dialogue activities are important for revealing the tension between the institutional order and the interaction order, indicating on-task and off-task modes of the discussion, understanding how disagreement space is shaped and a specific form of interactivity is constructed. Mediators can enforce the institutional order by intervening into the discussion and pointing out the dialogue activity disputants engage in is not appropriate.

Phenomenon 5: Participants' moves. Mediators' moves are the main focus of analysis as the study is primarily interested in the mediator's role in constructing a specific form of interactivity. However, disputants' moves are also taken into consideration as they create the local context of the interaction and are important for understanding the mediator's actions and the flow of interactivity, in general.

Codes: Mediator's moves. The mediator's moves enjoy a special attention as the mediator acts on behalf of the conciliation court. The mediator has to get disputants to contribute to the process of deliberation in a way that would build an institutionally preferred form of interactivity. How mediators design their moves projects contents and participation roles opens and closes possibilities for directions that interaction can take.

Pattern identification. The patterns to identify are the types of the mediator's moves to keep the interaction on track. Of special interest here are the interventions the mediators make in the situation when the shift in the discussion happens away from the main task.

Pattern interpretation. Studying mediators' interventions contributes to understanding how the mediation talk is organized and how mediators shape the interactivity and disagreement space depending on disputants' moves.

To sum up, in this section I focused on how I created an overview of each transcript, and described the basic plan of analysis of what is going on during the session, which will be addressed in greater detail in the following chapters on findings of the study. The features of discourse and codes defined here are salient for getting insight into the local context of the mediators' moves, identifying on-task and off-task modes of the discussion, understanding what becomes arguable and how the disagreement space is shaped and how a specific form of interactivity is constructed

The following chapters will describe the findings of the study and how this empirical analysis can be used to reflect on theoretical issues. Chapters 4-6 will examine the on-task/ off-task modes of the mediation sessions at the levels of references participants make in the course of discussion, topics they discuss, and dialogue activities they engage in. Chapter 7 analyzes moves the mediators make to keep the interaction on track. Finally, chapter 8 investigates how the mediator contributes to shaping an institutionally preferred form of interactivity by bringing to the forefront institutionally appropriate identities of participants. The results of the study provide grounds for theorizing about the issues of communication design, institutional talk, and

argumentation. I will reflect on how deliberation is constructed when institutional

constraints are imposed on interaction and with what consequences. I will comment on

how participants shape the discussion in the circumstances of the tension between the

institutional order and the interaction order, and how disagreement space is managed.

CHAPTER 4

REFERENCES AS INDICATION OF BEING ON-TASK/OFF-TASK

This chapter examines references (i.e., matters interactants bring into conversation) participants make in the course of mediation sessions with the purpose of understanding how these references serve as indicators of whether the mediation session is on-task or off-task. The next section will introduce the specific research issue. Next, the analysis will focus on the use of references to indicate and shape on-task/off-task modes of talk. The chapter will conclude with the discussion of the findings.

Research on References

The research on references sheds light on different aspects of reference practices, such as: the organization of references to persons in everyday interaction (e.g., Sacks & Schegloff, 1979; Schegloff, 1996, 2007), the use of location formulations (Schegloff, 1972), and the formulation of time and action (Jefferson, 1996). More recent work on references has advanced our knowledge of the uses of reference in performing actions (Land & Kitzinger, 2007; Lerner & Kitzinger, 2007; Oh, 2007).

Organization and Formulation of References

Focusing on the distinction between person-references and membership categories, Schegloff (2007) points out that mentioning people can be used to do different actions such as referring, describing, identifying, formulating and so on. There is a set of terms that can be used to do referring. For example, referring to people is done by using such resources as personal pronouns, names, category terms, and recognitional descriptors (Schegloff, 2007). The choice of term depends on initial or non-initial occasions of mention, the target of reference (e.g., the speaker, the addressed recipient or

other person), and the familiarity of the recipient with the target of reference (Schegloff,

2007). For location formulations, the selection of the term depends on such aspects as the

location of the participants, the membership identification in the interaction, and the topic

or activity being done at the moment (Schegloff, 1972). Although the techniques and

resources for formulating different references vary, the research shows that one of the

general preferences that operate in the production of references is *the recipient design*. In

other words, interactants design their references with a view of the recipient of the talk

(Lerner & Kitzinger, 2007; Sacks & Schegloff, 1979; Schegloff, 1972).

Interactional Functions of References

The recent research on references show that situated referring is accomplishing

more than just referring in the talk-in-interaction and that the selection of the terms of

references also depends on action formation (Land & Kitzinger, 2007; Lerner &

Kitzinger, 2007; Oh, 2007; Schegloff, 1996). One example of how the forms of

references are used to accomplish different interactional projects is the use of overt

references to speaker and recipient in Korean (Oh, 2007). The speaker uses overt

reference for self-praising, blaming, disagreeing, assigning responsibility, projecting their

talk, or selecting the next speaker.

Focusing on repair in collective and individual self-references, Lerner and

Kitzinger (2007) show how self-reference is fitted to the action of a turn. Shifting

between *I* and *we*, participants attend to matters of assigning responsibility and authority

for actions, experiences, or motives. For example, when professionals shift from an

individual self-reference to a collective one (what the researchers call *organizational*

aggregation)*,* they show that their judgment is not a personal opinion but rather an

organizational policy. On the contrary, when a shift is made from *we* to *I* (i.e., *organizational extraction*), an organizational voice is transformed into a voice of the agent of an organization. Interactants also can use third-person reference forms for self-reference to represent the views of someone else (e. g., an organization) (Land & Kitzinger, 2007).

This research shows that references play an important part in constituting the institutional roles of interactants. The lexical dimension of interaction on a whole is one of the significant features through which participants evoke the institutional context of talk (Drew & Heritage, 1992). The use of specific vocabulary, descriptive terms that indicate the participants' institutional identities, and temporal references are the ways interactants display for each other their engagement in institutional talk. The present study logically follows prior research on references in that it is looking at the role of references in signaling or constructing states of an activity. The chapter examines the use of references as indicators that interactivity is on-task or off-task.

In institutional talk, participants have different roles during the interaction and have different kinds of knowledge (Drew & Heritage, 1992), which is reflected at the lexical dimension of the talk. In line with this, the use of references can be a sign of this interactional asymmetry in institutional contexts. Thus, the question is how references were used by mediators and disputants during a mediation session, as reflected in the transcripts of mediation sessions. More specifically, the issue of interest is how references function as indicators of being on-task or off-task and how the uses of references contribute to constructing or maintaining an on-task mode of the mediation session and shaping the specific form of interactivity.

Analysis of References

The focus of the analysis was on what mediators and disputants bring into the discussion and linguistic tokens they use to do that. In the course of a mediation session, participants use different types of references such as references to people inside and outside of the immediate situation, references to the interactional product, and references to external matters (see the method chapter for the detailed description of these types). The use of references was analyzed across all the transcripts to find out patterns of their usage. The specific tokens of references were categorized through a grounded, inductive approach that involved the examination of each transcript of mediation sessions. Excerpt 3:15 is an example of the initial step in a grounded approach to coding references used to analyze the transcripts.

In the following contribution there are different ways the mediator makes references to the immediate co-present situation and also to other matters of context. Excerpt 3:15

M: Uhm ((Pause)) Okay. Well let's try and get away from those words visitation

       rights and all of those things which are very loaded and and make people (   )

       angry or sad or whatever and let's see if we can just talk about the times the

       children will be with you and the times they'll be with their mother. You're are

       saying you would like them primarily to live with you and to be with you a good

       part of the time, but you do seem to want to provide time for them to be with

       their mother.=

The mediator uses several kinds of references to display an orientation toward an on-task activity. Pronouns establish who is an addressed participant and who is an

unaddressed one. The primary recipient of the mediator's turn is the ex-husband addressed with the token *you*. Although token *you* can often present a challenge for coding, in this case it is clear that it refers only to one parent as the parts of the contribution "the times they'll be with their mother" and "you do seem to want to provide time for them to be with their mother" exclude the ex-wife from the list of primary recipients of this turn. *We* and *their mother* are examples of references to people in the situation as they refer to the participants of the session, whereas *the children* and *they* are references to people outside of the immediate situation, their children in this particular case who are not present at the session. *The times* spent with either parent is an example of references to external matters as it is mentioning of visitation time, which is a matter outside of the immediate situation (i.e., the mediation session). It is through these references that matters at hand are articulated in the moment from the surround of possibilities and bring in the aspects of the participants' world. The discussion can develop in any direction, but the references the mediator makes highlight what is this discussion about and focus the disputants on the task-related matter. These references, in a way, put constraints on the disputants' subsequent contributions.

In this chapter, I focus on the types of references that can serve as an indicator of interactants' orientation toward the task at hand, namely, references to interactional products, to people outside of the immediate situation (children and agents of an organization, in particular), and external matters related to the agenda of the meeting. The pragmatic interest here is how the references as actions display an orientation toward the event for others to take up and create an on-task mode of the mediation session.

Upon describing the uses of references, the analysis will conclude with a discussion of how these practices shape the deliberation process in the course of mediation talk and how they were used to create an institutionally preferred interactivity. I will discuss how these basic features of organizing the interaction are consequential for institutional argument and will show how they limit what becomes arguable during sessions. Finally, I will comment on how it improves our understanding of communication design. I will discuss the mediator's actions as "a designer in the situation" and design as a joint endeavor.

<div align="center">*Types of References*</div>

References to Interactional Products

Parties enter a mediation session with the ostensible aim of reaching some agreement on arrangements for their children. The interactional product that they create in the course of the meeting can be a plan, an agreement, a contract, an order, or some decision. Thus, the references to these interactional products indicate the participants' orientation toward being on task for others to take up.

There are differences in mediators' and disputants' usage of this type of references. Mediators are the ones who make most references of this kind (see Table 2.1), and how they use them will be described later in this section. Participants use different linguistic tokens to refer to the interactional product (see Table 2.2). Mediators tend to use linguistic tokens that are institutionally preferred for the reconciliation court, for example, *statement*, *arrangement*, *order*, *plan*, and *agreement*, the latter two being the most frequent token used on a whole. Disputants also use the tokens *arrangement*, *plan*, and *agreement* but not as often as the mediator. Disputants refer to the interactional

products either in a more vague manner, for example, *something written, something, thing* or use the tokens that are not quite appropriate for a mediation session, for example, *contract*, which will be discussed later in the section.

Usually, mediators refer to the interactional product at the beginning of a session when they give participants an idea about what is an expected outcome of the meeting. Its occurrence here serves the purpose of introducing the topical potential of the session and the kind of activity to participate in. This can be illustrated by the following example.

In excerpt 3:3, the mediator sets up the scene for the session and explains to the disputants the reason for their coming to the conciliation court, the process of developing arrangements for children, the job mediators do, and what the disputants are supposed to accomplish in the course of the mediation session (i.e., to create a plan for their children).

Excerpt 3:3

3 M: OK Very good. ((Pause)) I'm going to begin by telling you, about this process

and and why you're here and what we can hope to accomplish by your being

here. Um, before, you go before the court to present your case or instead of

hopefully, um, you come here to the conciliation court and our job is to assist

you to see if you can talk through some of your issues, and work out a plan for

your children, whereby they can be with you the father and you the mother. Um,

because although you're getting a divorce from each other, you're not getting a

divorce from your children, and your children need both of you, and the plan, the

job before both of you is to work out some plan, where they can be with you as

their mother and they can be with you as their father um, so it that could be

worked out here, then (you could) write up an agreement, a plan, that you two

have to come up with with my assistance, and then that becomes an order of the court, and enforceable, in other words you have to live up to then what you've agreed to do. But you have a right not to agree to anything in here, and if you do not then you go on before the court and (put) on your case and the judge makes an order, and then also (   ) a law in your family and you are required to live up to that. Um of course I encourage you as much as possible to try and work things out here because then this will be an agreement that you two have devised, and you know your children and yourselves much better than any judge ever will, so let's see if we can try doing that, let's give it a try, uhm I would imagine the issues are very hot between the two of you (   ) order, which um usually you know causes some anger on (   ) haven't seen your children in a while=

In this excerpt, M makes a number of references to the interactional product (e.g., *an agreement*, *a plan*, *it*). There is a certain repetitiveness in the way these references are made. M does not provide extra information but states again and again what can be accomplished during the session (e.g., "**work out a plan** for your children, whereby they can be with you the father and you the mother", "**the plan**, the job before both of you is **to work out some plan**, where they can be with you as their mother and they can be with you as their father", "**it that could be worked out** here, then (you could) **write up an agreement, a plan,** that you two have to come up with with my assistance, and then that becomes an order of the court", "this **will be an agreement** that you two have devised") . By doing that, M shows his/her orientation toward what this meeting is about and sets a task for the disputants to take on.

Two themes emerge from the context, in which these references are made. First, M makes it clear that developing this interactional product is the primary goal for the participants to achieve. Second, it should be done in a collaborative manner. The moves like 3:3 are persuasive moves about the nature of interaction, that is, they persuade about the kind of activity to participate in. A specific interactional product presupposes a certain kind of activity. A plan signals a kind of involvement that differs, for example, from a contract. Working out a plan implicates preferred acts, act sequences, participant identities, how to be relevant and so on in the course of interaction. When the participants are planning, they are oriented toward the future, they anticipate problems and consider ways to deal with them. They are not fixing grievances or distributing goods or resources to make up for what someone has lost and the like. Thus, it presupposes that the parties act as collaborators. The use of references to interactional products in this context re-occurs across the sessions. Thus, when the conversation is centered around an agreement, a plan or alike, the interactants are acting in an on-task mode.

References to the interactional product can also arise later in the discussion. They are used to keep the discussion going and disputants focused on the task. Mediators can bring the interactional product into the interaction to sum up what has been achieved in terms of agreement, to explain or clarify certain points, to ask parties to express their opinion on the interactional product, to suggest the wording of some statement or what kind of plan would be suitable for a particular case, persuade the parties to have a written agreement, and to avoid impasse (e.g., by reminding the parties that they are developing a temporary plan, not a permanent one).

The following excerpt illustrates this function. The references the mediator and the ex-wife make to a visitation order show their mutual focus on task at hand. Prior to this episode, the participants were discussing different visitation arrangements when the ex-husband suggests having a structured visitation order instead of the unstructured one they had at that moment. The conversation in excerpt 61:116 is centered on the interactional product that was the outcome of the preceding discussion.

Excerpt 61:116

116 M: How do you feel about a structured visitation order like that Carry?=

117 W: That's what I want to go by he's=

118 M: =OK=

119 W: =That's what I want to go by.

120 M: I think it'd be very easy for us to uh establish a court order (and) we would just plug that into it. Say look at the these are the visitation orders. This is what the visitation will be like. And yeah we can do it very easily here and you will sign it and so will Carry and (   ) there would be no need to come in on a April seventeenth right?

In the excerpt above, in turn 116, M asks W her opinion on the suggested visitation order. In turns 117 and 119, W expresses her agreement to it. In turn 120, M points out that the visitation orders will be part of a court order and if the participants sign the document, there will be no need for them to come again later.

In turn 116, M brings into the interaction the reference *a structured visitation order*, which is taken by W in turns 117 and 119, where she uses the pronoun *that* to refer to the visitation order. In turn 120, M makes reference to this interactional product again

(*visitation orders*) and makes a reference to another interactional product (*court order*, *it*). The connection of the references M and W bring into interaction indicates the participants' mutual orientation to the matter of the discussion and being on task. M makes reference to the interactional product after the participants have discussed different options of visitation arrangements. The parties have agreed on certain aspects of visitation, and M gears them to complete the task in the course of the current session. The outcome of the session should be a particular kind of interactional product. At this point, the parties have already developed part of this product, that is, visitation orders ("these are **the visitation orders**. This is what the visitation will be like."), which means that they are on the right track. M makes a point that the final product, that is, the court order, can be easily established "here" at the meeting, which is a persuasive move to push the parties to complete the task. In a way, in this example, referring to the interactional product serves as a checkmark of the progress made in the course of the session so far, and it is a way to keep the conversation going and to keep the parties focused on task.

References to the interactional product also function as an indicator that the participants have gone off-task. In this function, they occur most often in the middle of the session. This is exemplified in excerpt 33:75. Prior to this excerpt, the ex-husband brought in an issue of an abuse of their younger child by the ex-wife's elder son, which the ex-wife denied. The ex-husband pointed out that the ex-wife was not at home all the time, specifically, at nights. The ex-wife opposed this statement. The mediator's attempt to stop the development of the discussion was unsuccessful. In the episode below, the disputants continue their confrontation. In turn 83, the mediator intervenes to bring the

interaction back on track by pointing out that the disputants' exchange is not helping

them to create a plan.

Excerpt 33:75

75 W: I come home at night <u>you</u> are [<u>lying</u>   ]

76 H: [She stays out] with her girlfriends all night

        I'[ve got dates]

77 W: [that's a lie   ]

78 H: All right, you know. I'm [I'm the one that's was]=

79 W: [this   this-   ]

80 H: = [there] with my son

81 M: [this]

82 H: =I took care of my [son all night long

83 M: [Brent excuse me, Okay? Th- this is not helping us work

        out a plan ((PAUSE))

84 H: [I want my son] I'm I am able to physically give him full attention.

        In turns 75-82, W and H exchange accusations. H points out that W spends nights

with her girlfriends instead of her children, which depicts her as an unfit mother who

neglects her kids. W claims that H's accusations have no ground and accuses him of

lying, which damages H's image. In turn 83, M makes reference to the interactional

product (i.e., a plan) and directly states that what the disputants are doing at the moment

is not contributing to the development of the plan. The disputants, however, do not take

this up. In the conversation that follows this episode they continue their confrontation. M

makes a couple of moves to terminate it and finally suggests having a separate conversation with each participant.

At the beginning of the session, M pointed out that the goal of the meeting is to develop a written agreement between H and W on the arrangements for their son. The trajectory of the discussion in the episode above goes off-task. What the disputants bring into the interaction has nothing to do with the institutionally relevant task of working out an agreeable plan. In this excerpt, the reference to the interactional product, namely, a plan, contrasts their current behavior with the institutionally preferred behavior by highlighting how their current behavior has gone off-track from the expected form of interaction. Thus, M uses the reference to the interactional product to refocus the participants on the task at hand.

In short, references to the interactional product can serve as an indicator of participants' orientation toward the business at hand. It is important to keep in mind that this interactional product is the one expected by the organization providing the mediation service. Although disputants refer to the interactional product, too, it is mediators who make references of this type most frequently. The mediator's job is to ensure that participants know what they are expected to do and keep them focused on the product while disputants are to develop a plan. In other words, disputants' task is to craft a product, while mediators' task is to craft a designing system that allows participants to do this. The references of this type are employed at the beginning of the discussion to set a task before the participants and later in the course of the session to keep the discussion focused on task or to show that the conversation is off-track. Thus, the mediator acts as a

designer, crafting a form of interactivity with an aim of shaping the content and outcome of this activity.

References to People out of the Immediate Situation

In this section, I will analyze how references to people outside of the immediate situation, that is, the mediation session, are employed to show participants' orientation toward the task at hand.

In the course of a mediation session, participants make references to different groups of people that are not present at the meeting such as children, neighbors, family members, acquaintances, colleagues, babysitters, agents of an organization (e.g., lawyers, judges, psychiatrists, counselors, the police, doctors, teachers, mediators), witnesses, religious groups, researchers, clients, abstract people, and unknown people (see Table 2.3). These subtypes of the category emerged as a result of the analysis of all the references of this type made across the transcripts. Some of these subtypes can be to some degree an indicator of participants' orientation toward the task (or brought in when participants are focusing on task), for example, references to children, agents of an organization (e. g., judges, counselors, lawyers), clients, and abstract people. All these references are related to the process of dispute resolution and the interactional product to a certain degree. For example, children are the target of the interactional product; judges, lawyers, and counselors are people who can help to deal with the problem if disputants are not able to come to agreement in the course of a session. Other clients and abstract people serve as an example of what can be done to solve the problem. The use of these references, especially by disputants, might signal general relevance to the institutional setting but does not guarantee that they are on task, that is, they might be disruptive in

their use of these terms. In the following sections I will describe how these references are employed to create an institutionally preferred form of the interactivity. First, I will discuss the usage of references to children.

References to children. The goal of a mediation session is to make arrangements for children, so it is not surprising that this type of references is brought in most frequently (if to compare to references to other people outside of the immediate situation) by all the participants of the meeting. However, when the mediator brings in these references into interaction, it is task-related; when the parties make them, this is not necessarily the case.

The following episode (excerpt 50:6) illustrates the usage of this kind of reference to set up a task for the meeting. It takes place at the beginning of the session right after the mediator has had a separate conversation with each disputant. The mediator makes references to children, while explaining alternative ways to deal with the situation. One option is to let the judge make a decision for the disputants; the other one is to try to reach an agreement in the course of the mediation session. The mediator advocates the second option and encourages the disputants to work out the situation in such a way that their children would have two parents in their life. At the beginning of the turn, the mediator brings the children into focus, then makes a shift for a moment to the financial aspect in case the disputants choose to go to court, and refocuses again on the children. In a way, the mediator sets up the task for the parents to accomplish in the course of the meeting by bringing their children into focus.

Excerpt 50:6

6 M: Seems to me you have several, several options in the in the, situation ((PAUSE))

Uh, I don't really know what's best, for the kids in terms of, options in the sense
of, you could do a number of things I think that would ((PAUSE)) think would
work out okay for the   children ((PAUSE)) uh ((PAUSE)) but, what you should
do, uh ((PAUSE)) is something that that, if you can work out yourselves it's be
better if you can't then it will be thrown in the judge's lap ((PAUSE)) uh
((PAUSE)) first option being that, that uh ((PAUSE)) stay here ((PAUSE)) and
uh, try to uh ((PAUSE)) uh, make it financially that's one of the reasons you're
going back, you know, uh I really can't do that much financial planning with you,
I can't tell you how much you're going to get ((PAUSE)) from the judge or, I
can't, you know, be up to you whether or not, you can get a job that's satisfactory
to you.

7 W: =Mm

8 M: It's up to you whether you think you can make it financially. ((PAUSE))
 Obviously there's there's decided advantages to, having both of you around the
children, assuming   that that the uh relationship between Doug and you improves
((PAUSE)) you know, a child should, feel comfortable with his father and (
) obvious things you are willing to go for, or continue in the therapy and
((PAUSE)) all things being equal, they could have two parents and they love
their both love their children and whatever problem (which) uh, therapist should
be able to help with that in time you know, depends on ((PAUSE)) uh ((PAUSE))
and that's that required both your help in trying to set-

The opening speech here is task-related as M lays out the ways to solve the
problem the disputants have and addresses the reason why they came to the conciliation

court in the first place. M is contrasting what they could do (i.e., going to court) with what they should do (i.e., to work out an agreement in the course of the mediation session). This opening is setting up the scene for the interaction to unfold. What M brings in into interaction here is important for the accomplishment of the task at hand. In these two turns, M makes recurrent references to children (eight references to be exact), which is a sign that they are the essential part of this process. In terms of their usage, references to children, first of all, are employed in connection with the business at hand, that is, H and W are here to reach an agreement that is best for their children. Thus, the children are framed as the agency, for whom the participants are developing the interactional product. Second, references to children are made in the context of relationships between the children and the parents. M focuses on positive aspects of that relationship and importance of having both parents in the children's life (e.g., "Obviously there's there's decided advantages to, having both of you around the children", "a child should, feel comfortable with his father", "they could have two parents and they love their both love their children"), which gears the disputants to come up with arrangements that would give each parent an equal opportunity to participate in the life of their children. In other words, M encourages the disputants to develop not just any kind of the interactional product but the one that is based on the children's best interests and parents' equality. Thus, alike the references to the interactional product made at the beginning of the session, the references to children are employed to set a task before the disputants.

References to children are also used to keep the interaction on track, which is illustrated by excerpt 33:12. Prior to this episode, the mediator was explaining to the disputants the alternative ways of making arrangements for their son, namely, going to

court or developing a plan during the session, and encouraging them to do the latter. In excerpt 33:12, the mediator initiates the discussion on things for the children. Here, it is possible to see how the focal point of the interaction changes through references the participants make and how the mediator keeps bringing in the children into the conversation to focus the disputants on task.

Excerpt 33:12

12 M: But uh what other concerns about Chris what would you like for Chris

13 W: Well I want Chris with Now my husband has files a custody suit that my

            twelve year-old son from a previous marriage beats the five year-old, and that I

            stand by and don't do anything about it. Now this is very untrue, they are

            [both my children   ]

14 M: [Let me, let me back up] a

            little bit and ask you what you would really like for Chris and Greg, not not

            for yourselves but for them.

15 W: Want 'em to have everything that I been tryin' to give 'em=

16 M: =Okay, what what ha been try- what have you been tryin' to give 'em.

17 W: Good life

18 M: Good life

19 W: Everything physical and, mind can give you, 's what I've tried to do for the past

            since he's been born and before that I tried to (deal) with my other one also.

20   ((PAUSE))

21 M: S -- is it Lucile, Lu[cille

22 W: [Lucille

23 M: Lucille what what else would you want for Chris and Greg. What would you

          want to give them

24 W: Well I wanta give 'em the best of everything I'm able to, I'm working

25 M: Mhm

26 W: I don't want Chris taken away from me, and to go with his father because I

          don't think that would be right, his father is on drugs, he's an al he he drinks,

          he lies, all this is very untrue what he's been saying. He can have visitation

          rights, what what I know he will do is I know that minute he gets ahold of

          Chris I won't see Chris again. He eh he'snot working, he has nothing to hold

          him here he has told me time and time again that if he and I ever separated, he

          would take Chris and I would never see him again. Now he's turned

           a[round and said]

27 H: [That's not true]

28 W: That is tr[ue

29 H: [No it's not true.

30 W: What you have [said about about Greg]

31 H: [I'm   not   working]   because I had an accident [okay   ]

32 W: [Because]

          you were driving under the influence and went off a cli[ff Brent]

     In the excerpt above, M asks W what she would like for her son Chris (turn 12).

W does not provide a relevant response (turn 13), and M repeats the initial question (turn

14). In turns 15-19 and 23-25, the discussion is centered on the children, and then

gradually shifts to the exchange between W and H with focus on H's personality and the accident that illustrates what kind of person he is.

M repeatedly makes references to the children to focus W on task (turns 12, 14, 16, and 23). In turn 13, W refers to the children, too, which makes it seem that she is orienting to the task at hand, at least at the surface level. However, she brings references to H and some past event, which starts shifting the focus of the discussion. M intervenes to refocus her attention on the children again in turn 14. In the consecutive turns, both M and W make references to the children, maintaining an on-task mode (turns 15, 16, 19, 23, 24). However, in turn 26, the focal point starts shifting again, which is reflected in the references W makes and their frequency. At the beginning of the turn, W refers to her son but then the focus shifts on H. On the whole in this turn, W makes five references to Chris and eighteen references to H. Gradually, the discussion diverges from the things for the children to H's personality and the accident that happened to H, and the interaction goes off track.

The use of references to children tends to appeal to what is best for the children both in the introduction of the session and as a way to get disputants back on track. References to children can be an indicator of being on-task and contribute to crafting the institutionally preferred form of interactivity. These references are used to set up a task for the participants to accomplish and to keep them focused on the business at hand when the interaction goes off-task. The mediator employs this kind of references to make the participants keep in mind for whom they are crafting the interactional product. However, the disputants may exploit references to children to pursue their own agenda, that is, to depict themselves in a favorable light and to undermine the image of the other party.

References to agents of an organization. In this section, I will turn to another subtype of references to people out of the immediate situation, namely, agents of an organization. Mediators are the ones who make references to different agents of an organization (e.g., the judge, attorneys, psychiatrists, and psychologists) that often can become part of a dispute resolution. The mediator brings in these references into interaction to construct a meeting as an institutional encounter and keep the conversation focused on the task at hand.

On the one hand, references to agents of an organization are used when the mediator explains alternatives to deal with the situation (e.g., going to court) or necessary procedures to go through (e. g., a psychiatric evaluation), which is illustrated by excerpt 3:244. The mediator gives a recommendation to the disputants what steps they can take to solve their problem. The disputants have a lot of disagreement and tension between each other and cannot come to an agreement on arrangements for their children. The mediator advises them to see the psychiatrist or psychologist to get a custody evaluation. In case the disputants find the recommendation of these specialists satisfactory, they can accept it as a plan for their children. If they oppose the recommendation, they will bring this report to the judge.

Excerpt 3:244

244 M: =What I'm saying this is this, the two of you are very frozen in

          [your positions]=

245 W: [Um hm   ]

246 M: =it doesn't seem like you're going to, agree to anything here plus what really

          complicates this matter is the fact that you want to move out of state, not that

you don't have a right to do that, but you know it it removes the children in a very volatile time. Therefore my recommendation this (   ) that perhaps, um you just cool it for a moment of maybe three weeks, it first of all it would give you a time to see the children she hasn't seen the children for a while, an um it it would not mean that you couldn't move out of state it just defers it until some third party an objective third party, either a psychological or psychiatric evaluation I don't know the title of the person at this clinic that I have in mind um could perform an eval- a custody evaluation ah which would assess yourself you know both psychologically (and in) your relationship with the children and yourself both psychologically (and in) your relationship with the children as well as and of course the children that person would meet with the child[ren   ]=

247 W: [Uhhunh]

248 M: =either a psychiatrist or a psychologist, and anyone else you might want that person to meet. That person will then write up a report about your family and yourselves, go over it with you, and offer a recommendation, to you, as to what might be a good plan for your family, um in that event you would then be free to accept the plan, at that time, and say gee you know maybe this is something we ought to try for the welfare of the children or if you were still very against the recommendation, you would still have the report to take into court with you and the judge would have some basis of objective information to go on. ((Pause)) So I'm asking you if you want to consider this but I want you to know you don't have to=

249 W: =Uhmhm=

250 M: =that you can go to court today uhm maybe what you want to do is talk this

over with your attorneys=

In turns 244 and 246, M states that the discussion has reached an impasse as both

disputants are unwilling to change their positions and to "agree to anything". M suggests

that the disputants should go to a third party to get an evaluation (turns 246 and 248). M

makes a number of references to a third party that can provide assistance to the disputants

outside of the mediation session. It is not just any kind of third party but the one that is

formally involved in the process of dispute resolution. This is reflected in the linguistic

tokens M uses to refer to that person (e.g., *an objective third party*, *a psychiatrist*, *a

psychologist*) and the functions that this person can perform (i.e., that person can perform

a special kind of evaluation, namely, a custody evaluation, and write up an official report

that will be accepted in the court). At the end of the turn, M brings in another agent of an

organization, namely, the judge, who can assist the disputants at a more authoritative

level in case they are not able to resolve their dispute on their own. Finally, in turn 250,

M refers to the disputants' attorneys who can help them to make their decision.

In the excerpt above, the discussion focuses on the possible ways to deal with the

parties' current situation, so the participants are acting in an on-task mode. The mediator

makes references to people who are part of the process of resolving the parties' dispute

(i.e., the judge, the psychiatrist, the psychologist, attorneys), thus these references show

the mediator's orientation toward the task at hand. The mediator's moves show the

adaptation to the changing situation, that is, when the interaction has reached an impasse,

the mediator keeps the disputants focused on task by centering the discussion around

other viable ways they can deal with their problem outside of the session. These moves can be also threatening for the disputants as the alternative ways of dealing with the problem mean that the disputants will lose control over the process of decision-making. However, these other parties are a "logical" extension of the institutional way of handling the dispute.

On the other hand, mediators refer to agents of an organization, specifically, attorneys and the judge, when the interaction goes off track. For example, they bring in the judge or an attorney into interaction to point out that they are the ones who should be dealing with certain issues (e.g., the financial aspect), not the mediator, as it can be illustrated by excerpt 34:184. Prior to this episode, the discussion was on visitation time. The ex-wife would like to have a more structured form of visitation than they were having at the moment as, in her opinion, it would be beneficial for the child and the parents. However, the ex-husband questions the ex-wife's intentions and supposes that there is a financial aspect involved in making this proposition. The mediator intervenes not to let the discussion go off-task.

Excerpt 34: 184

184 H: You need some structure by having me pay for you

(3 turns omitted)

188 W: [Money] has nothing to do with this at this point=

189 M: =It does and it doesn't all right?

190 H: It does [it does matter   ]

191 M: [What's real important] what's real important Arnold is to come up with

          a plan that is good for Valerie. Apart from the money, Valerie simply needs

to be with both of you.

192 W: Right

193 M: Okay after that's worked out then either the attorneys or the judge will work

out the money.

In turn 184, H brings in a financial aspect into the discussion. W claims that it has

nothing to do with the visitation arrangements they are discussing (turn 188). M makes a

point that both parents are right (turn 190) but they have to work out financial issues later

either with the judge or their attorneys as the main task at the moment is to develop a plan

for their child (turns 191 and 193).

In this excerpt, the ex-husband brought into the interaction a financial aspect that

is out of scope of the mediation session. The mediator makes it clear that working out the

financial matters are secondary at the moment, whereas working out arrangements for the

child is the priority. The mediator makes references to attorneys and the judge to shift the

responsibility of dealing with this matter to people who are more appropriate to help the

parties with this aspect of their disagreement as they have either more competence in that

area or more authority. These references are a sign of the mediator's orientation toward

the task and are used to prevent the shift in the discussion.

In short, references to agents of an organization can be an indicator of orientation

toward business at hand. While disputants can also bring into interaction agents of an

organization (e.g., the head of school or the police), it is mediators who refer most

frequently to agents of an organization who are directly related to the process of dispute

resolution (i.e., the judge, the attorney, the psychiatrist, the mediator). These references

are employed to keep disputants on track. On the one hand, judges, attorneys, and

therapists are introduced to avoid dealing with the issues that are out of the scope of the session. On the other hand, references to these agents are used as threats to encourage disputants to stay in the session. Giving disputants an idea about options to resolve their problem, mediators often frame turning to these agents as less desirable than working out issues in the course of a mediation session as the alternative ways are more expensive and disputants have less or no control over decision-making.

References to abstract people. In this section, I will turn to one more subcategory of references to people out of the immediate situation, namely, references to abstract people. These people are not involved directly in the process of dispute resolution. Nevertheless, references to them play an important part in shaping the discussion as these people provide examples of possible ways to deal with the disputants' situation.

As a rule, clients bring in into the discussion references to people they know while mediators often make references of more abstract nature (e.g., hypothetical parents, children, people who seek to solve custody and visitation issues in general). They use these references to provide parties with examples of how other people in a similar situation deal with their problem or how certain arrangements work. For instance, in excerpt 50:46 the mediator focuses on what can be done if one of the parents has to move to another state. The ex-wife is considering a possibility to move to Arizona with the children as there are more opportunities for her to find a job there, which will result in a frequency decrease of the ex-husband and the children's seeing each other. The mediator goes over a typical plan for children if their parents live far from each other.

Excerpt 50:46

46 M: This, you, know, the advantages of it that, that, the children, would see more of

their father than if you moved to Arizona, you know it, it would be more,

advantage advantageous to you now, uh obviously you personally, to go to

Arizona I mean, you know and the courts ordinarily respect people's rights to,

live wherever they want to. So uh possibly things, you can show you're in good

faith to the judge and if this this is where you want to go there's, you know

there is the possibility the judge will grant to him and, you'll have to make the

arrangements for you to see, the children but, obviously you gonna see 'em a lot

less of 'em ((PAUSE)) sometimes when the uh ((PAUSE)) father lives that far

away then, the typical sort of plan is for school age children is, father gets a

large amount of time during the summer, you know, maybe, eight, weeks or so

you know, and just give your mother time for, vacation if she (works), plus a

week at Easter, plus a week at Christmas and uh, uh, time at uh, Thanksgiving

or any four-day holidays that you might feel you'll work out, because they don't

want to interrupt the child's education ((PAUSE)) That means the child,

children are going to be away from you ((PAUSE)) possibly eight or ten weeks

and that's that, doesn't make you too happy either, [I'm sure] ((ha))

In this excerpt, the focus is on arrangements for children in case one of the parents

moves out of state, thus it is task-related. Among other references M makes in this turn,

there are references to abstract people (e.g., *people*, *the father*, *school age children*). M

makes these references to provide general information on what usually happens when this

kind of situation arises. First, M brings in abstract people into interaction when

mentioning the judge's respect for people's right to move (e.g., "**people**'s rights to, live

wherever **they** want to"). Next, M makes references to fathers and children in general to

give an example of a typical visitation arrangement when a parent moves out of state (e.g., "sometimes when the uh ((PAUSE)) **father** lives that far away then, the typical sort of plan is for **school age children** is, **father** gets a large amount of time during the summer").

The references the mediator makes are task-oriented. They can be viewed as a more subtle way to give a recommendation. The mediator does not tell the parties directly what they should do in their situation, but provides them with an option what can be done, based on the experience of other people.

To sum up, the common feature of references to people outside of the session that mediators most frequently make is that these people (i.e., judges, attorneys, counselors, children, abstract people) are connected to the process of dispute resolution in one or another way, either as the target of the interactional product, or the professionals who can provide assistance, or examples of problem solution. These references are employed to keep participants focused on the business at hand or bring them back on track if the interaction diverges from the main task. They serve as an indicator of the orientation toward the task and contribute to shaping a specific form of interactivity.

References to External Matters

In this section, I will analyze references to external matters that can be another indicator of a task-oriented activity. Among many things outside of the immediate situation (i.e., a mediation session) that participants refer to (e.g., location, occupation-related matters, events, and state of affairs), there are references that are directly associated with the task participants are trying to accomplish in the course of a session, and, thus, they indicate interactants' orientation toward the task. These are references to

custody and visitation matters and the process disputants have to go through to resolve

their dispute. For example, in the following episode (excerpt 34:153), the focus of the

discussion is on developing a plan for the child, and the mediator makes a number of

references to external matters that are related to the business at hand.

Excerpt 34:153

153 M: … In the next five or ten minutes then let's talk about some possible plans,

some possible ways to go. We'll have our attorneys come in and help us. Um,

if you need more time you can always come back here and we can set up

another appointment to talk about a plan. ((PAUSE)) The parts that you agree

on so far is that there is to be joint legal custody which recognizes the

importance of both of you always in caring for Valerie. The two of you are

to talk to each other about major decisions regarding health, education and

religion. Quite apart from where Valerie stays. I know you are interested in

either custody or joint custody. Right now you're probably um a couple days

away from from a joint arrangements although it's real close ((W SNIFFS))

What your proposing I think April is that Valerie be with you from Sunday

through Tuesday which are your days off so that everyday or every week

she's with you during those those days.=

154 H: =I didn't understand that

155 M: Ok Sunday three o'clock to Tuesday three o' clock Valerie will be with you.

Ok. What Arnold would like I think is more time with Valerie. Um, I'm not

sure exactly how much more time. One thought I had is temporarily since

you're working six to two-thirty, you could probably work out some plan

where you saw her one or two more days a week between say three o' clock

after you're off work until early evening. No[w that may be a better]

First, M points out the possibility of having another appointment if necessary

(turn 153). Then M mentions the parts H and W agree on, that is, having a joint custody,

and decisions to be made in terms of health, education, and religion matters (turn 153).

Next, M moves on to the time arrangements W has proposed (turn 153) and the time

arrangements H would appreciate (turn 155).

In the excerpt above, the references that the mediator makes to external matters

are task-associated. For example, the reference *another appointment* is related to

organizational matters of the process; the references *joint legal custody*, *joint custody*,

custody, and *joint arrangements* are related to custody matters; and *Sunday through*

Tuesday, *those days*, *Sunday three o'clock to Tuesday three o' clock*, *time*, and *one or*

two more days a week are the references to the time arrangements for the father to be

with his child. All these themes are connected with the goal of the meeting, and thus the

references the mediator makes show orientation toward the task.

To sum up, among many references to external matters that participants make in

the course of a mediation session, it is possible to distinguish those that can be directly

associated with the institutionally defined task at hand (e.g., references to visitation and

custody matters, the process of dispute resolution outside of the mediation session).

These references are employed to shape a mediation activity and create a task-orientation

mode.

References in the Context

In this section, I will focus on the importance of taking into consideration the local context of the reference usage. The analysis shows that there are certain patterns in the reference usage that can be a sign of participants' focus on task. However, these references should not be abstracted from their surrounding, as bringing in a certain type of reference is not a guarantee that the discussion is on track.

It was mentioned before, for instance, that references to children can be an indicator of an on-task mode as children are the reason for having this meeting and the ones who are affected by its outcome in the first place. This on-task orientation is usually true in regard to what the mediator brings into the discussion, while disputants' references to children are not necessarily task-related, which is illustrated by excerpt 56:23. All the way through interaction here, the participants make references to the child. However, the focus of the discussion is gradually shifting from visitation arrangements to the behavior of one of the disputants.

Excerpt 56:23

23 M: Whatever ((PAUSE)) your situation, this child should be seeing both of you

frequently. And I mean, the the younger children are, the b- the more often, the

more frequent, the visits should be. No necessarily long

24 H: Well I tried to make an effort to see her every day but her mother kind of kept

her away ((PAUSE)) or ((PAUSE)) or I couldn't go see her or else she would

say that she wasn't going to be home or she didn't want company, but I'd, I

would go and see her at lunch, the same as before I would always go home for

lunch and we both worked the same distance and I always, came home for

lunch, took her downstairs and made lunch for her?

25 W: Oh I love to comment on some of those (   ) you would come down and

see Laurie without telephoning that you were coming, you were coming in

during Laurie's dinner time

26 H: I never stopped her from eating dinner (   )=

27 W: =Okay look it's very distracting for her, when her Dad's there, and she's gonna

play, for her to sit down and eat her dinner. And that you're not only

distracting her you're distracting the rest of the family.

28 H: But your [mother used]

29 W: [And it's very] inappropriate for you, to show up without telephoning

30 H: But your mother used to tell her (   ) that if she didn't want to eat to get

away from the table. And it was just like that.

31 W: It is just like [that she'd finished]

32 H: [All right so what is] what's the problem [then

33 W: [When she'd finished

eating she's excused from the table. ((PAUSE)) But, let's stick with the issue

which is, you were showing up (   ) telephoning.

34 H: If you said that=

35 W: =and also, if my mother had something to do in the evening you, according to

the court's regulation you're there at her convenience. Not she there at your

convenience.

36 M: So uh what are you what are you saying Christina uh, is that is this a way of

saying that, that if, there can be some kind of understanding and some kind of

arrangement, that uh you, that would put some kind of uh, [safeguards]

In turn 23, M stresses the importance of the presence of both parents in the child'

life and the necessity for young children to see them frequently. H makes a point that he

did his best to see his daughter every day but she was kept away from him (turn 24).

Next, W accuses H of coming to visit their daughter Laurie without notice and at

inappropriate time (turn 25). In turns 26-35, the interaction is basically centered on the

issues whether H's visits distract Laurie from having dinner, except turns 29 and 33

where W brings back the issues of visitation without telephoning and turn 35 where she

refers to the court's regulation in regard to visitation rules. W's point is taken on in turn

36, where M refers to visitation arrangements.

In the excerpt above, M makes references to children and visits, focusing on the

frequency of visitation for young children, and thus, being on track. In the subsequent

turns, H and W keep referring to their child, so on surface they may seem to be orienting

toward the task as the child is still part of interaction. However, other references they

bring into the discussion indicate a shift in it. If in turns 24 and 25, the focus is still

partially on the visitation issues such as visitation frequency and time (e.g., the references

every day, *lunch*, *dinner time*), in turns 26-34 the focus is on past events. W describes

these events in terms of H's behavior and accuses him of distracting Laurie from having

dinner while H's position is that the child's behavior at dinner was usual and in line with

what W's mother told her to do. H and W mostly make references to W's family

members (e.g., *your mother*, *the rest of the family*) and the process of having a meal (e.

g., *dinner*, *the table*). W's comment in turn 33 directly indicates that the discussion has

gone off track. She points out that the child's behavior during dinner is not the issue in

question but H's showing up without notice. This issue is related to visitation matters, which is evident in M's subsequent turn where M checks what W is saying and makes reference to visitation arrangements. The discussion continues in an on-task mode.

The combination of different types of references, on the other hand, can indicate an on-task mode of interaction, which is exemplified by excerpt 50:82. In this example, the focus of the discussion is on the arrangement for the children. The ex-wife wants to move out of state together with the children, and the ex-husband would like the kids to stay with him. The mediator makes a point that the ex-husband can try to bring this case to court, however, the chance for him to get custody over the children is not great. Instead, the mediator offers an opportunity to develop a visitation plan during the session. This discussion is task-related, and the orientation to the task is revealed through different types of references such as the interactional product, people outside of the immediate situation, and external matters.

Excerpt 50: 65

65 M: But in order to you, to say it'd be better for the children, to stay here with me while mother goes to Arizona, you'd have to come up, which (   ) I would think (   ) show the judge that yeah I have such a close relationship with, the kids'd really rather, they seem to adjust better and do better with me than they do with mother, therefore they should stay here, rather than go to Arizona with mother.

66 H: Well [they'd be]

67 M: [You know] once, w- if it's assumed that if the judge said yes you can go to Arizona, and what's the best interest of the children should they remain in

California or should they remain with mother, at this point you

y[ou're proba]bly on=

68 H: [Well   ]

69 M: =a losing [score]

70 H: [Well] it's awfully difficult because I'm at the, at the short end of the

stick, I only get to see them, a little bit of the time

71 M: K- Some=

72 H: =and

73 M: What I'm saying is ((PAUSE)) whatever the reasons you know ((PAUSE))

that's reality

74 H: [[Yeah I know]

75 M: [[Uh I don't   ] think you'd get custody

76 H: Mhm

77 M: You know, so really you only have ((PAUSE)) the choice of, either your

remaining here, and work on a visitation plan or if your mind is made up that

you're definitely gonna go and try to get permission ((PAUSE)) and uh is that

where you are in (t)his thing you're=

78 W: =Yes I'm

79 M: You're n[ot really see]ing it as an option to stay here.

80 W: [Yeah I'm   ]

81 W: M- m, I have tried too hard as I have said on my own, to them, and only been

accused back by them for everything other than ((crying)) my good intention

have been

82 M: Really the only option I have to talk about with the two of you here is, what

kind of visitation rights you're gonna have ((PAUSE)) if the judge lets you go

((PAUSE)) Well ((PAUSE)) I don't know whether you ((PAUSE)) How do

you feel about that whether whether you want to talk about that options,

whether you want to try to work up some kind of agreement here ((PAUSE))

or whether you

In this excerpt, M makes a number of institutionally relevant references that all together contribute to creating an on-task mode of the discussion. First of all, there are references to external matters that are directly related to the agenda of the meeting such as custody and visitation matters (e.g., *the time* in turn 70, *custody* in turn 75, *a visitation plan* in turn 77, *visitation rights* in turn 82). Next, there are references to people outside of the immediate situation who are the primary target of the meeting, that is, children (e.g., *the children* in turns 65 and 67, *they* in turns 65-67, *them* in turn 70, *the kids* in turn 65), and an agent of an organization involved in the process of dispute resolution (e. g., *the judge* in turns 65, 67, and 82). M also makes reference to the interactional product to be created in the course of interaction (e.g., *agreement* in turn 82).

These examples show that references, when taken in isolation, are not necessarily a sufficient indicator of the discussion being on-task. It is important to consider them in the context and in combination with other references.

To sum up, references participants make in the course of interaction can be an indicator of an on-task mode of the discussion. References to the interactional products to be created during the session (e.g., an agreement), to people who are not present at the session but can contribute to the process of dispute resolution (e.g., the judge, attorneys),

who are the primary target of the decision-making (i. e., children), or who serve as an example of possible ways to solve a problem show participants' focus on the task and are employed by the mediator to bring the interaction back on track. However, these references should not be regarded in isolation. It is important to take into consideration their surrounding and what they create in combination. Next, I will discuss what these findings mean in terms of communication design, institutional talk, and argumentation.

Discussion

Interaction and Institutional Orders. Social Epistemology and Social Relations

The prior research focused on various aspects of references from the techniques and resources for formulating references to the role of references in accomplishing actions, but not on the use of references in shaping an activity. On the one hand, references can be signals of what activity participants engage in. On the other hand, calling different aspects of the world around the participants contribute to creating an activity. Regardless of how technical the word choice is, references to a certain object, matter, person can serve as an indicator of an on-task mode of the interaction. For example, participants of mediation sessions may use a technical term (e.g., visitation order) or more "lay" vocabulary (e.g., plan) to refer to the interactional product. In both cases, they show their orientation toward the task at hand.

The use of references can be a sign of interactional asymmetry in institutional context. For example, the mediator makes references to interactional products, institutional professionals related to the process of dispute resolution (e.g., the judge, attorneys, mediators, court), clients, abstract people more often than other participants of the session, whereas disputants make more references to people from their surrounding

(e.g., their family members, acquaintances, babysitters, neighbors) and the police than mediators. This can be attributed to different roles and knowledge participants have, which is in agreement with other studies of institutional talk. The mediator has more knowledge of institutional nature, that is, knowledge about the mediation system and alternative ways to resolve the dispute, and shares this information with the participants. The disputants have knowledge of a more personal kind. They inform the mediator about their particular case. In terms of participation roles, the mediator has to ensure the development of the discussion in the institutionally preferred direction. Making certain types of references (e.g., interactional products) helps the mediator keep the disputants focused on the task and bring them back on track if they go off-task. It is a kind of signaling that frames interactivity. The disputants, in their turn, have their own interests in the outcome of the discussion. They refer to people, events, things that may help them appear in a more positive light while damaging the image of the opponent. Thus, references can be evidence of tension between different interactional goals. But, how are these basic features of organizing the interaction related to and consequential for constructing a particular type of interactivity and institutional argumentation? In the next section, I will discuss the interplay between reference use, design, and strategic maneuvering.

Communication Design

The interaction in the course of mediation sessions is supposed to lead to a limited range of interactional products. This is the process-product interconnection and, in part, is related to what Schon and Rein (1994) describe as a double-design problem. In crafting a policy object (e.g., a contract, a policy, a plan), parties must also craft a

designing system, that is, a way of interacting that enables construction of the policy object. In a similar way, participants of a mediation session have to develop a plan for their children, and the mediator's moves are geared to shaping a specific form of interactivity that will produce this institutionally defined outcome. This practice helps solve the double design problem by pointing to interactional paths to take as it was demonstrated, for example, by Aakhus's (2003) work on mediators as designers. Mediators' impasse moves limit the discussion around planning and focusing on future, reframing impasses into an opportunity to have a discussion.

During the session the mediator acts as "a designer in the situation" (Schon & Rein, 1994, p. 166). They design the trajectory of activity for disputants to take up, while being part of this activity. They have to take into consideration the constraints that the specificity of the interactional product puts on interaction and possibilities it provides and work with the resources that are available in this interaction, for example, different kinds of references. References are used to perform actions. Employing certain types of references mediators set up a specific task for disputants to accomplish, keep them focused on that task, and bring the interaction back on track when participants shift to an off-task mode. References are also indicators of what interactants are doing at a given moment. References mediators use show their own orientation toward the business at hand. At the same time, references disputants make can be an indicator for the mediator if participants are orienting toward the task, too. Thus, references serve as a means of coordinating an activity and indicative of the double design process. References are used to gear the interaction toward creating an interactional product. At the same time, to construct on-task/off-task modes, participants have to signal what they are doing.

References in this case are a metacommentary on what kind of interaction the participants are having.

The essence of communication design (Aakhus, 2007) is that it is an intentional act (although, certainly, designs can emerge through no overseeing actors). The designer crafts a form of interactivity with an aim of shaping the content and outcome of the activity. However, an important and, at the same time, challenging aspect of being a designer in the situation is that the design situation is always evolving. Disputants bring their own interests into interaction; they can resist mediators' actions or take an advantage of them. Thus, the mediator has to adapt to the situation as it unfolds. For example, in excerpt 34:184 discussed earlier in this chapter, the mediator makes reference to money in the way that allows the ex-husband to continue bringing in the financial aspect into the discussion. The mediator adjusts to the situation and makes moves to change the trajectory of the discussion by bringing in the interactional product as a focal point and financial issues as, although important, a peripheral matter at that moment. The mediator also employs references to the professionals (i.e., the judge and attorneys) who can help the disputants with the financial aspect. In this way, the mediator's moves put constraints on the development of the discussion by connecting the desired product (i.e., a plan) with the designing system (i.e., a coalition of actors - participants) and the situation and by associating the undesired matter (i.e., the financial aspect) with actors outside of the situation (e.g., the judge and the attorneys). These moves are, however, the result of what other participants have brought into the interaction, so what we have here is actually co-design.

Understanding the interaction in the course of mediation sessions in terms of communication design is vital for understanding argumentation. The important point is that argumentation is not prior to the interaction but an outgrowth of it, which can be seen in the idea of strategic maneuvering.

Strategic Maneuvering

Strategic maneuvering is the concept developed in argumentation theory to explain behavior that lies outside of the critical discussion but seems necessary to make argumentation happen in less than ideal conditions. This concept is developed for principals in a dispute but not so much for those who are not principals and who are to take on a responsibility for the quality of the interaction. In a mediation session, it is a mediator who takes on this role. In the course of mediation sessions, the goal of achieving a reasonable settlement goes hand in hand with participants' attempts to get what they most want, so the parties are involved in strategic interaction to balance both aims. In contrast to the parties whose gains are related to their personal interests, the mediator's interests, in a way, are the interests of the conciliation court on behalf of which he or she acts. The mediator's strategic maneuvering orients to achieving the institutional goal. The routine institutional practices mediators use for keeping the disputants on task constrain what is arguable.

The strategic maneuvering manifests itself on three levels, namely, topical potential, audience demands, and presentational devices (van Eemeren & Houtlosser, 2001). The use of references reflects the level of presentational devices. The use of references constructs an activity in which the argument is embedded. With help of references, the mediator is doing persuasion about what is the nature of this activity.

Making references to things, people, matters that are connected with the process of

dispute resolution helps keep the argumentation within the limits of the institutionally

defined task and contribute to shaping the quality of the interaction. For example, the

mediator's bringing in agents of an organization (e.g., excerpt 34: 184) shuts down an

opportunity for having an argument. Using different types of reference, mediators shape

what becomes arguable.

In this chapter I examined different terms as a way to see how these terms are used

to perform actions. How actions are approached in this chapter does not exclude other

possible ways of treating actions (e.g., bringing in references to criticize, to praise among

others). This chapter primarily focused on how participants use references to shape and

signal activity. These data make it possible to observe the constructing of an interactivity

at a micro level. The analysis, however, shows that although references are a significant

component in creating a certain type of interactivity, they are not a sufficient one. These

basic elements play an important part in the development of discussion themes. In the next

chapter, I will focus on on-task/off-task modes at a higher level, namely, at the level of

topics.

CHAPTER 5

TOPICS AS INDICATION OF BEING ON-TASK/OFF-TASK

The prior chapter established the connection between references participants make in the course of mediation sessions and on-task/off-task modes of interaction. That chapter also showed that references are not necessarily a sufficient indicator of the discussion being on-task and that it is important to consider them in combination with other references and to see what theme they construct together. This chapter builds on the previous chapter and examines topics with the purpose of understanding on-task and off-task modes of mediation talk. Before proceeding to the analysis of topics, I will briefly discuss the research on topic management to show the importance of topics as a resource in the shaping of interactivity.

Research on Topic Management

The research on topic management has advanced our knowledge of different aspects of the organization of topic in talk-in-interaction such as topic initiation and topical shifts. Levinson suggests (1992) that structural aspects of activity put constraints on topic and topical cohesion. However, topics can be viewed as the material for constructing a specific interactivity. In this section, I will first focus on research on topic management in everyday ordinary conversation as these practices serve as basis for institutional types of interaction, and then I will turn to research on topic management in institutional talk. This review aims to show that topics can serve as an organizational feature of interaction.

Topic Management in Ordinary Conversation

The topic initiation is considered to be a point where participants display, in a more or less clear manner, their orientation to topic. Participants use various devices and methods to implicate a new topic depending on whether it develops from the prior talk, whether it is introduced as segmented from the prior talk or is treated as business-at-hand (Button & Casey, 1988/89).

Studying segmented topical movements, Button and Casey (1984) identify *topic initial elicitors*, that is inquiries about newsworthy events such as "Anything else to report", and the sequence of talk they initiate. This sequence consists of a topic initial elicitor, a positive response to the previous turn and a newsworthy-event report that can serve as a new topic, and a topicalizer. The researchers distinguish three specific positions in the course of interaction where this type of sequence occurs, namely, "following opening components, following closing components, and following topic-bounding turns" (p. 187).

The research on topical shifts has shown that participants use different devices to make a transition from one topic to another. For example, among the devices that interactants use to make topical transitions there are combinations of minimal response to the preceding move and a shift; recipient assessment and a shift; recipient commentary and a shift (Jefferson, 1993). In all these cases, there is a combination of interactional engagement and topical disengagement. In this way, the participant, on the one hand, shows his or her attention to the co-participant and, on the other one, makes a shift to his or her own matters.

Another device that interactants employ to make a transition is a figurative expression. Holt and Drew (2005) note that, although this type of expression is most commonly followed by a disjunctive topic, in some cases these expressions serve as a pivot to a new topic as they make a connection between two matters. They close the prior talk and open an opportunity for a new one to start. These findings go along with Jefferson's (1993) ones as the figurative expressions act as summaries and assessments. An important feature of figurative expressions as pivots is that the transition is done in a stepwise fashion. This type of transition was proposed by Sacks (1972/1992), who notes, that a general feature for topical organization in conversation is to move from topic to topic not by "a topic close followed by a topic beginning" but by a stepwise move that "involves connecting what we've just been talking about to what we're now talking about, though they are different" (p. 566).

Studying transitions from talk about trouble to other matters, Jefferson (1984) identifies the following features of exit devices: they are *topically disjunctive* (i.e., a new matter is not topically coherent with a prior talk) and *interactionally cohesive* (i.e., the interactant who initiates the shift does it with the talk that orients to the co-participant). Although these exit devices are employed most of the time, Jefferson argues that there is an alternative one, namely, a stepwise transition. The shift from the talk about trouble is done through a number of sequences, where the participants connect ancillary aspects of this type of talk with an unrelated topic. In some cases, this type of transition is preferable as introducing a new topic too soon after talking about trouble may be inappropriate.

These practices of topic management are important to know as they occur not only in ordinary conversation but can be employed in institutional talk as well. The institutional practices derive from practices of ordinary conversation and have their own specificity depending on the type of institutional talk, which will be discussed in the next section.

Topic Management in Institutional Talk

Speaking about activity types, Levinson (1992) suggests that the nature of activity puts constraints on its organization, in particular on topical cohesion and functional adequacy of contributions. The previous research on topics has revealed that there are constraints on the devices that interactants employ to initiate a topic and to make a transition from one topic to another, depending on the nature of talk. For example, the format of such institutional talk as open-link radio show is consequential for topic initiation (Hutchby, 1996). In this talk, callers are expected to express their opinion on some social issue and to set their own agenda for a discussion. The caller usually introduces a topic immediately after greeting the host. In calls for emergency assistance, the caller introduces a reason for call after an identification/recognition sequence that establishes the identities of the caller and the answerer (Zimmerman, 1992). A greeting and a "howareyou" sequence that typically precede the first topic in ordinary telephone calls are normally absent in this institutional talk. Another example of how the format of talk puts constraints on topic initiation is introducing a new topical line in the television news interviews. Here, it is interviewers who usually initiate a new topic. They do it quite often by making a provocative statement attributed to a third party, which lets them preserve their neutrality (Clayman, 1992).

Button and Casey (1984) specifically focus on topics as business-at-hand and argue that there are specific procedures that are designed for introducing this type of topic that are different from introducing a new topic as segmented from the prior talk or developed from it. According to the researchers, these topics have a known-in-advance status as there is some agenda that the participants have to work through. This agenda warrants the initiation of topics and enable a smooth movement from one topic to another. For example, at the beginning of the meeting the chair can map out the course of the interaction, that is what has to be accomplished and the order of items of business. Thus, the topics get a known-in-advance status that serves as a resource "to account for the intelligibility of a methodic movement through the business-at-hand" (p. 79). The agenda is also used as a resource to bring the conversation back on track when the participants drift away. The point here that Button and Casey make is that although the agenda provides the order for the talk, this order is also accomplished locally by invoking this agenda. In an open-line talk radio show, the host uses different techniques to control the agenda of the discussion such as validity challenges and formulating (Hutchby, 1996). Although it is the caller who introduces the topic, the host exploits these practices to shape or determine what is agenda relevant. Thus, there are constraints on who introduces the topic, when it happens in the course of interaction, and how it is done.

Topic Management as a Mutual Achievement

Another important point that researchers make, which is relevant for both ordinary conversation and institutional talk, is that the organization and management of topic is a mutual achievement (Button & Casey, 1984, 1988/89; Jefferson, 1984; Stefani & Horlacher, 2008). For example, when a new topic is initiated, participants can always

curtail the talk on the topic, so for the topic to get developed, the other party should, on the one hand, show that they find the initiated topic legitimate and, on the other one, they also have to display their orientation to talking on this topic (Button & Casey, 1988/89). In their research on the backlinking of topics in a radio phone-in program, Stefani and Horlacher (2008) emphasize that the backlinking is an interactional achievement. In a similar vein, the shifts from one topic to another are also mutually accomplished as it can be seen, for instance, in how interactants coordinate their moves to construct a transition from trouble-telling to an unrelated matter (Jefferson, 1984).

The knowledge of topic management is important for this research, on the one hand, from the methodological point as it is helpful in the segmentation of topics. On the other hand, it suggests that topics in institutional context can be an organizational feature of the activity and topic management can be indicative of the social epistemology and social relations dimension of institutional talk. Institutionally goal-oriented forms of talk presuppose a certain agenda, which puts some constraints on allowable contributions to the discussion in terms of topics. At the same time, participants, especially the leader of the discussion, can control the development of interaction and keep them on-task by evoking this agenda. Thus, the question of interest is how topics contribute to shaping an on-task mode of mediation talk and in this way to crafting a specific type of interactivity, and what topics are considered as irrelevant and detrimental for it. The more specific issue of how on-task topics serve as a resource for bringing interaction back on track when the interaction derails will be discussed in Chapter 7.

Analysis of Topics

The analysis of the whole corpus of transcripts from mediation sessions shows that interactants bring in a variety of topics into interaction which differ in the degree of their relevance to task at hand. In the following section, I will first explain how different topics were identified. The topic is understood as a theme or subject participants talk about. As Button and Casey (1988/89) point out, the way to understand what constitutes an aspect of talk as topic is to look at participants' orientation to topic in the construction of their interactions. Thus, the identification of topics is based on the connection of participants' contributions to constructing a coherent segment of talk around one theme, and the references participants make serve as indicators that participants focus on the same subject matter of the discussion. Establishing a topic is a way of highlighting what aspects of the history of events and current moment will be attended to. The move of referring is a kind of pointing to what should be attended. Participants do not only point to the ongoing talk, however. They try to point to other aspects of their circumstances or history, that is, they bring things into the ongoing talk.

Excerpt 37:73 illustrates the identification of a topic. The analysis of linguistic features indicates that in the following excerpt (turns 74-83) the theme of the discussion is the (ex)-wife's involvement into and her impression of the psychiatric sessions that her daughter had.

Excerpt 37:73

73 H: Well she wouldn't come out and say why but anybody who has any intelligent

        knowledge of Alison knows why. Because uh she always likes to take the easy

        way out that's why she wants to live with her mother. She won't stand up and

you know face up to the situation. And because she was being asked to do things that was a little more difficult than normal she wanted to back down. She always wants to take the easy way out. And this uh was proven time and time again uh with sessions we had with psychiatrists. 'Cause I was taking her down there uh two or three times a week.

74 M: Were you ever included Lynelle in these evaluative processes?

75 W: Uum, hum yes

76 M: How did you feel about it? What's it like the psychiatric process?

77 W: (   )

78 M: Why not?

79 W: I can't really say because to me it didn't really say anything when we were there at all. She tended to clam up and just wouldn't talk. He did most of the talking.

80 M: How did you feel about the uh how did you feel about the psychiatrist and what they're doing. What they're trying to do=

81W: We really weren't in there that long. I think the main thing that we were talking about then was uh percentage wise on tennis shoes and not buying expensive things. She wanted uh I think she wanted a bike or something. ((PAUSE)) I don't know

82 M: Are you saying that you were impressed or you were not impressed?

83 W: I weren't no I was not.

The new topic develops from the prior talk. The focus of the discussion that precedes this example was on the daughter's going back to live with W. Speculating about

the reasons for the situation, H mentioned the sessions Alison attended while she was living with him, which M incorporated in his turn to start a new topic. Turns 74 through 83 are a segment of talk that is constructed around these sessions and W's stance on them. The segment is connected through various lexical and semantic ties and related propositions. References the participants make (e.g., references to external matters related to the agenda of the meeting such as *the psychiatric process*, *these evaluative processes*, *it*, references to people outside of the immediate situation such as *the psychiatrist*, the daughter (*she*), and references to the participants of the session such as the wife (*you*, *I*, *Lynelle*)) indicate the mutual focus of attention. The contributions the participants make (questions and conditionally relevant responses) revolve around the same subject matter and shape a cohesive talk on the (ex)-wife's involvement into her daughter's psychiatric sessions and her impression of them.

The mutual orientation to the subject matter of the discussion, however, is different from being task-oriented. The participants may engage in discussing some past event, which has no relevance for the agenda of the meeting and does not contribute to achieving the goal of the meeting. In this case, the participants have mutual focus of the interaction but going off-task. To identify what topics are treated as on-task in the course of mediation sessions, the analysis primarily relies on the topics that mediators initiate and their relevance for the institutional goal of interaction. While other participants may bring in issues that are not related to the goal of the meeting, the mediator as a service provider is more likely to orient toward the agenda of the session. In each transcript, first, threads of topics were identified in the manner shown by excerpt 37:73. Then I calculated how many of these topics each participant initiated. The number includes topics that were

introduced for the first time and those that were revisited later in the discussion again. The simple statistics of the number of topics initiated by each participant (see Table 3.1) show that, in the majority of sessions (17 out of 18 sessions) the mediator is the one who opens a new thread of talk more often than other participants. Besides, in 10 sessions this figure reaches 50% or more. For example, in transcript 9 (44) the mediator introduced 55.55% of all the topics discussed in the course of that mediation session, while the husband and wife initiated 16.67% and 27.78% respectively.

This suggests that mediators may exercise certain control over what should be the focus of the discussion based on the institutional preferences for this kind of interaction. Thus, studying the topics initiated by mediators can be valid for understanding an on-task mode of sessions.

In the next section, I will turn to the analysis of what is considered to be on-task and off-task topics in the course of mediation sessions. Then I will show how topical appropriateness is a relative matter. I will use the empirical findings to comment on the organization of mediation talk as institutional interaction. In terms of argumentation theory, I will discuss how topic contributes to shaping disagreement space and strategic argumentation. Finally, I will comment on communication design showing how topics are used to construct a particular type of interactivity.

Types of Topics

On-Task Topics

The topics that are treated as on-task can be grouped into the following categories: *visitation issues*, *custody issues*, *collaboration of the parties*, *ways to deal with the*

situation, *relationship issues*, *personal information*, *a mediation session*, *technical*

matters, *agreement*, *interaction process during the mediation session*, *children's interests*,

the parties' behavior and character features, *children's behavior and personality*, and

financial issues (see Table 3.2). This grouping into categories was based on overarching

themes that specific topics have in common. For example, visitation time, visitation

frequency, or visitation rights are more or less specific subject matters that participants

talk about in the course of their discussion. These subject matters represent different

aspects of visitation. Thus, on a more abstract level, they were grouped into *visitation*

issues.

The identified categories are related to what participants are trying to accomplish

in the course of sessions in terms of the task at hand and derive from the institutional

activity of dispute mediation. For example, the categories *visitation issues*, *custody issues*,

agreement, and *children's interests* are centered around the primary reason for attending

the conciliation court, that is, working out some agreement on visitation and/or custody

arrangements for children. Other categories touch upon the necessary conditions and

ways to resolve the dispute (e.g., *collaboration of the parties* and *ways to deal with the*

situation), things that can hinder this process (e. g., *relationship issues* and *interaction*

process during the mediation session), the technical side of this process (e.g., *technical*

matters and *a mediation session*), and information about the involved parties that is

relevant to the process (e. g., *personal information*, *the parties' behavior and character*

features, *children's behavior and personality*, *financial issues*). All these matters

contribute to keeping the participants on task and organizing the talk in the way that gears

toward achieving the institutional goal of interaction.

Some of these categories can be considered as major themes while others occupy a more peripheral position, which is reflected in the frequency of their occurrence. The category *visitation issues* is the most frequent one, which is not surprising taking into consideration the goal of the meeting. Two other large categories are *ways to deal with the situation* and *relationship issues*. Both of them touch upon important matters that can help or obstruct the process of working out arrangements for the children. The categories *financial issues* and *collaboration of the parties* are the least attended ones. However, there is a significant difference in their nature. The former is related to essential problems that the disputants have to solve while the latter is a condition that can make the process easier, at least from the point of view of how mediation is conducted in these sessions and this mediation center. Thus, the minimal focus on the former category serve as a sign that this type of topics is out of the scope of the session. Next, I will describe these categories in a greater detail.

Visitation issues. The discussion of different visitation issues includes visitation arrangements (e.g., where and when to pick up the child, giving a call before visiting a child), visitation time (e.g., visitation schedule on a regular basis and during holidays), visitation frequency, visitation order, visitation rights, and problems with visitation arrangements.

Custody issues. This category includes custody arrangements (present and future) and types of custody.

Collaboration of the parties. The mediator brings in the matter of collaboration into the discussion as an important component of achieving the goal of the session (e.g.,

working out a plan together) as well as the parties' dealing with their children on an every day basis (e.g., ex-couple's functioning as parents after their divorce.

Ways to deal with the situation. This category includes discussions on decision making and alternative ways to resolve the parties' disagreement over the arrangements for their children, which are going to court (e. g., court hearing, court decision and process) and the procedures related to this process (e.g., court investigation, psychiatric evaluation), and handling the issues in the conciliation court (e.g., what is the conciliation court, how it functions, conciliation court fees).

Relationship issues. This category includes relationship between the parties (e.g., communication problems, trust, feelings and emotions, marriage (good things in marriage, marriage issues), divorce, separation, frequency of contact between the parties, the effect of relationships problems on children, relationship between parents and children (e.g., parents' influence on their children, reasons for a child's negative attitude toward a parent), relationship with the parties' other members of the family (e.g., dealing with the ex-husband's sister).

Personal information. In the course of the session, the mediator gathers various personal information and inquires about the location of each parent (past and present), their contact information, information about children (age, name, residence), information about attorneys, family members, the parties' acquaintances and friends, the parties' occupation, the way parties spend holidays.

Mediation session. This category includes threads of the discussion on the rules and procedures of the session, confidentiality of the session, what can be talked about during the session, the mediator's duties, the parties' expectations from the session.

Technical matters. This category includes topics that are not directly related to the task at hand but, nevertheless, are relevant for the course of the current session and the progress of the case in future. They are the recording of the session, the way to spell the child's name, the date of going to court, arranging another session, how to sign the agreement, who should meet first with the mediator for a separate conversation, having a separate conversation with each party, contacting and involving the attorneys, setting up an appeal, the period of time needed to conduct the evaluation process, the parties' plans for the rest of the day after the session, reasons for filing for the divorce at a different location.

Agreement. This category includes discussions of an existing agreement between the parties, the essence of the agreement, the formulation of the agreement, the parties' understanding of the agreement, and the temporality of the agreement.

Interaction process during the mediation session. The parties' behavior during the mediation session, violations of the rules of conduct, irrelevance of the discussion are topics that constitute this category.

Children's interests. This category consists of topics on safety matters, things to do in order to help a child, and the effect of arrangements on children.

The parties' behavior and character features. This category includes such topics as involvement of a party in the AA program, controlling information by a party.

Children's behavior and personality. This category includes topics on different aspects of children's behavior and character, for example, telling different stories to parents, behavior of bright children, children's abilities (decision making by children), children's problems (health issues, mental state), and ways to deal with children.

Financial issues. A difficult financial situation due to the end of marriage, financial help, and child support are the topics of this category.

To ensure the achievement of the institutional goal of mediation talk, the interaction during a session has to be centered on the issues that are on the agenda of the meeting. While the mediation forum may exist for these purposes, it is not necessarily or automatically there. It must be constructed as such in the flow of interaction. The mediator's behavior provides constraints on possible ways the interaction can unfold by introducing institutionally relevant topics for the discussion.

However, the participants do not always follow this agenda but bring in their own interests into the discussion. When the participants go off-task, the mediator signals that the focus of attention has shifted onto the matters that are out of scope of the meeting. In the following section I will describe topics that the mediator treats as inappropriate for the mediation session.

Off-Task Topics

Among topics that the mediator treats as improper for the discussion are the ones that revolve around the *parties' negative behavior*, *financial issues*, *court process*, *parties' interests*, and *private matters* (see Table 3.3), with the category *parties' negative behavior*

being the largest. Further in this section, I will describe these categories in detail and give the examples that illustrate them.

Parties' negative behavior. One of the topics that mediator indicate as inappropriate is a disputant's behavior that undermines his or her own image. The people who come to the conciliation court are in conflict with each other and carry negative emotions towards one another. This negative attitude is quite often expressed in the course of the session by bringing in into the discussion past events that show the opposite party in an unfavorable light, which mediators treat as inappropriate. Excerpt 9:6 illustrates this point.

The mediation session is a forum for the participants to make arrangements for future, so bringing in past events into the discussion, although sometimes necessary, is limited to those occasions that can help to understand the situation and help to resolve problems in question. It is crucial for discussion that topic is a way of highlighting the circumstances and the history of events and that establishing topic is a way of framing what is relevant for discussion and how to talk about it. These are the mediator's rhetorical moves. The following example shows how the mediator directly raises an issue of bringing in past events that may harm the image of one of the disputants. This episode happens at the beginning of the session after the mediator asked the (ex)-husband and the (ex)-wife to share what they want, and the (ex)-husband encouraged the (ex)-wife to do that. In the excerpt, the (ex)-wife refers to some past event in order to illustrate the relationship between the (ex)-husband and their son Oscar. She brings in into the discussion an issue between the (ex)-husband and Oscar, namely, the child's fear of his father and announces that she will talk about the past. The mediator interrupts her to

clarify what can be appropriate to talk about regarding past events and what things he is not interested in to hear.

Excerpt 9:6

6W: [Well,   ] Well anyhow Oscar's rather hesitant of Jack, he's a little afraid of
       him, and I'll have to bring up the past be- because of the past and um=

7M: =Yeah by the way let me just say, there are some things about about the past that
       are important to understanding, uh further than that I'm not interested. It's not a
       matter of who's right or wrong or good or bad or moral or immoral or any of
       those things, I don't care.

8W: Mhm.

9M: But there are times when something needs to be said about, in in in terms of
       understanding so, let's=

10W: =okay=

11M: =feel comf- feel comfortable with that

12W: 'Kay. Anyway uh as it stands right now, Oscar won't go with him, he won't go
       in the car with him, so whenever he calls I let him come see (   ), and
       what I wanted for him was when Oscar says he wants to go with his father, then
       Oscar will go with his father not into a forced situation where he'd be miserable.

13M: Have you uh tried to help uh [Oscar]

14W: I've had him [in fact] I have the bill here I- I had him to a psychologist, and
       another problem that's what all these papers are, 'cause Oscar has a past history
       of irritable colon syndrome which is called diarrhea, and by upsetting him, he
       could (   ). (   ) it's a touchy situation but

15M: Yeah but and that's why I'm- I'm, I- I think it when it's done, that he go to his

         father need to be something that he feels comfortable with=

         In turn 6, W brings in an issue of the child's being afraid of his father and points

out that she is going to talk about some past event. The mere mention of the past appears

to trigger M's response in turn 7. M intervenes to warn W that bringing in the past is only

appropriate if it contributes to the process in terms of understanding. However, past events

that depict one of the parents in a negative way and the other one favorably are not

allowable in this setting.   The way W starts her turn 12 ("kay. Anyway") signals that she

acts as if she was interrupted by M and is going to go ahead and do what she was going to

do. Although she frames her narrative in the present (e. g., "as it stands right now",

"whenever he calls", using the negative form of the modal verb 'will'), she refers to the

events that occurred repeatedly in the past. In this turn, W does not appear to be explicitly

negative about H, although bringing in the issue of the child's fear of his father suggests

that there might be something wrong with H (after all, the son is not afraid to be with W).

M does not question the relevance of this past event but he does not contribute to the

discussion of the event itself. M picks up on this information as though establishing some

facts about the circumstance of the child sharing arrangements and brings attention to the

issue of getting help for the child (turn 13), which becomes the focus of the further

discussion (turns 14 and 15). Thus, in this example, M interjects the talk about the past

and states the rules for the session (i.e., what participants should not talk about) but at the

same time he backs off from enforcing the rules and lets W talk about the past as

sometimes it is important.

This example reveals some nuance about what can be talked about as the mediator's action draws that out and exemplifies what is appropriate. While certain aspects of the past are valid for the discussion, the past events that focus on the parties' personalities and depict them as "right or wrong or good or bad or moral or immoral" are not appropriate. The mediator is more or less specific about what participants should not talk about, as far as the past is concerned, but he is vague about what past events that are worthy of bringing in into the discussion (i.e., "there are some things about about the past that are important to understanding"). This broad interpretation of the "exception" to the rule opens a gateway for the participants to talk about the past. At the same time, this vagueness in terms of what aspect of the past can be brought in into the discussion may be connected with a general orientation of mediation talk on future rather than the past. There is not much in turn 6 to make a determination that the (ex)-wife is going to talk about a past event that establishes who is right or wrong, good or bad. The mediator's reaction to the mere mentioning of the past might be evidence of attending to the words and to the institutional goals. In this setting, the focus on future is institutionally preferred as it keeps participants on task whereas the past is often emotionally-loaded and the events that participants refer to are negatively-charged.

The following episode is a more straightforward example of the category *parties' negative behavior*. Physical abuse by one of the parties is another topic that the mediator finds off-task. The following example illustrates the development of the discussion on the (ex)-husband's violent behavior and its termination by the mediator. Prior to the excerpt below, the conversation focus was on the emotional state of the children, particularly at the moment when one of the parents would come to pick them up. The mediator made a

supposition that the children's upsetting mood can be related to the parties' arguing in front of them. The (ex)-husband pointed out that he and the (ex)-wife would usually have a verbal argument and that he had never abused the (ex)-wife. However, the (ex)-wife mentioned that she had some legal document as evidence of the (ex)-husband's behavior. As the (ex)-wife did not have it with her, the mediator asked her to describe the gist of it. The interaction that follows in excerpt 59:520 centers on the (ex)-husband's violent behavior. The (ex)-wife accuses the (ex)-husband of being abusive. At first, the mediator gives the (ex)-wife an opportunity to expand on the topic. When she does, the mediator, however, intervenes to terminate the development of the topic and refocus on visitation arrangements. Nevertheless, the discussion over the issue of the physical abuse continues, and the mediator has to intervene a few more times to make a topical shift toward creating the plan that would allow the parents to decrease the contact with each other.

Excerpt 59:520

520M: [[You were] trying to get a piece of paper of some kind to show me something,

          I believe

521   ((PAUSE))

522W: [[A statement   ] about just what he spoke=

523M: [[Why don't you just]

524W: =[about

525M: =[yeah okay

526W: That man is abusive to me

527   ((PAUSE))

528M: Unh hunh

529   ((PAUSE))

530W: Then he's trying to deny it

531M: All right ((PAUSE)) At the moment I can just assume he's saying he doesn't do

          it and you're saying he does now I don't have to decide whether that's valid

          [or not uh it may]=okay

532H: [(   )]

533M: I'm just saying if you two do argue or get upset or tend to, make, you know

          things that the kids would pick up when you exchange them this could be

          upsetting to them if you actually do those things, and, I don't know whether you

          do or not ((PAUSE)) The only thing I can say about a lopsided arrangement is

          you'd only have to see each other once coming and once going every two weeks

          rather than every other day. Now if that, in a se[nse offers you a big]=

534H: [(   ), okay   ]

535M: =advantage, I can see, your point assuming she feels you know [(   )

536H: [We're an

          everyday family.=sure we argue ((PAUSE)) and basically, you know you

          cannot

537W: Well [arguing   ] is one thing but when you grab=

538H: [What's an argument]

539W: =me and throw me down in to the cement and then, bite my hand, in front of

          the kids

540M: When did he actually do that

541W: One day I went to pick up [the kids]

542M: [Very   ] recently?

543W: Yes last week

544M: Last week, oh ((PAUSE)) Well, okay [again as I s]ay I'm not there=

545H: [(   )]

546M: =so I [don't know]

547H: [Okay,   ] uh, first of all I'm going to deny it=

548M: =all right=

549H: =(   ) ((PAUSE)) If we put down every time that I grabbed you or every

          time you've hit me, hit me, physically in the face

550W: Oh=

551H: =we could, we could go on forever okay?

552W: (   ) hit you in the face [(   )

553H: [Have you ever hit me Susan

554   ((PAUSE))

555W: Yeah when you're holding me down on the ground and you're shaking a fist at

          me and you won't let me get up, I have to protect myself

556M: Are you saying by effect that you never start, any of these [physical] violences

557W: [No   ]

558W: No

559M: I don't know that we can get too far on this because

          you'[re each gonna] maintain your

560H: [(   )]

561M: own positions [and   ] fortunately I do not have to make any=

562H: [Right]

563M: =decisions about it with anybody who knows what they're talking about on that

          subject (topic) at least=

564W: =Well if by go[ing (   )] is that I don't have to get=subjected to this=

565M: [But it may]

566M: =you're [saying if you had]

567W: [And that the   ] kids don't have to witness, usually, fortunately he

          has not done all of this in front of the kids=

568M: =All right fine (   )

569W: But there has been one scene that has been in front of the kids and the kids

          have asked me about it. =I had to take them home crying from it ((sniff sniff))

570   ((PAUSE))

571M: So you're saying the less time the children are changed uh less frequency they

          are changed the less chance there would be for this type of uh, problem. Very

          simple. Okay. ((PAUSE)) and that would have something to do with it if these

          things are actually happening yes I uh=

572H: =Basically this this then, counters that

573M: 's fine ((PAUSE)) Well this is about as frequently as you'll every have contacts

          under this plan [that's true I'll have to=agree wi]th that

     This excerpt is an example of how M highlights the institutional requirements and,

at the same time, disregards them. On the one hand, M's moves are geared to terminating

the topic development. In turn 531, M uses the topic termination marker "All right" and

then after a pause makes a point that it is out of his scope of responsibilities to validate H's and W's contradicting positions. In turn 533, M makes reference to the previous comment on what can be a cause of the children's distress and refocuses the discussion on visitation arrangement. However, M fails to do this. In turns 544, 546, and 548, M makes some more unsuccessful attempts to close this topic in a mild manner, making reference to his explanation about his role as a mediator and functions he can and cannot perform, which he made earlier in the course of the session. The discussion, nevertheless, keeps going between H and W. In turns 559, 561, and 563, M again intervenes to stop the discussion on this topic pointing out that they could not delve on that issue as H and W were not going to change their positions and, what is more important, making a decision on this issue was out of M's competence, which makes this topic not relevant for the task at hand. Finally, when W in turn 570 makes an attempt to bring in an issue of the physical abuse again, M does not delve on this but instead frames a problem in terms of the frequency of contact and shifts the focus on the plan that can solve this problem. Thus, M shows in different ways that the topic of physical abuse is off-task.

On the other hand, M does not enforce this rule consistently as he gets involved in the discussion over H's violent behavior himself. First of all, he grants the permission to W to speak about H's actions. He asks W about the contents of the document related to H's behavior. Then, when she points out that H abuses her (turn 526) M gives her a chance to elaborate on her accusation. W's comment is followed by a pause, then the marker "Unh hunh", and another pause, which can signal that the current speaker is expected to continue. Later on, M asks W when the incident she was talking about took place (turn 540) and checks with her if she has ever started fights (turn 556). In this way,

he contributes to developing this discussion and focusing on the past events and the parties' behavior.

In a way, the mediator seems to send contradictory messages to the parties. The mediator opens possibilities for the disputants to delve on the issues, and when they take these opportunities, the mediator interjects and points out that what the disputants are doing is off-task. At the same time, the mediator's actions indicate that M is managing multiple demands. It is possible to see in these actions the carving out a topic of interest at least to one of the participants and situating that within the demands of the way mediation is conducted. It is an example of crafting a topic that in turn keeps the disputants on-task.

Excerpt 33:70 is another example of an attempt to make the behavior of a party to be a subject of the discussion and the mediator's reaction to it. The (ex)-husband's moves depict the (ex)-wife as an irresponsible parent who does not take a proper care of the child and does not spend enough time with him. At the same time, he shows himself as a fit parent who can give his full attention to his son. The mediator intervenes a couple of times to shift the direction of the talk from discussing the (ex)-wife's actions towards working on a plan.

Excerpt 33:70

70H: [She's not home half the ti]me

71W: I am home all [the] time

72M: [OK]=

73H: [[She doesn't come home at night]

74M: [[Lucille   excuse   me,]   Lucille and Brent, both, both of you.

75W: I come home at night you are [lying   ]

76H: [She stays out] with her girlfriends all night

        I'[ve got dates]

77W: [that's a lie   ]

78H: 'll right, you know. I'm [I'm the one that's was]=

79W: [this   this-   ]

80H: = [there] with my son

81M: [this]

82H: =I took care of my [son all night long

83M: [Brent excuse me, Okay? Th- this is not helping us work out

        a plan ((PAUSE))

84H: [I want my son] I'm I am able to physically give him full attention.

85M: [(   )]

86W: You are not [working=

87M: [OK

88W: I [am Chris   ] is fine in the home he is in he's going to school =

89M: [what happened]

90H: =[He has a place to live that has] an atmosphere

91W: =[There is nothing wrong with him]

92H: T[hat's] totally different=

93M: [Hey]

94H: = th[an his dad]

95M: [let   let] me talk to each of you alone for a while OK?

96H: OK.

In turns 70, 72, and 76, H brings in into the conversation W's behavior accusing her that she is not at home all the time and spends night with her girlfriends and not their son. In these turns H refers to the present situation but in turns 78, 80, and 82 he shifts to the past. H brings in one particular past event when he had to stay with the son all night long while W was away with her friends. In turn 71, 75, and 77 W opposes H on this issue and accuses him of lying. M intervenes in turns 522 (the topic termination marker "Okay"), 74 (summon and apology), and 81, and then in turn 83 M refers to H and points out that this discussion does not help the participants to create a plan for the child, which is the main task of the meeting. Although the discussion shifts to the present, M's intervention, however, does not stop the parties from trying to undermine an image of the other party as a parent. M makes an attempt to intervene again in turns 85, 87 (topic termination marker "Okay"), 89, and 93 (summon) and, finally, shuts the discussion by making a request to have a separate conversation with each party.

Discussing the party's actions that cannot be proved shifts the focus of the interaction on the past while the focus of the mediation talk is on making arrangements for future. However, what mediators are doing in terms of keeping the disputants on-task is not given but performed. The mediator has to decide on the fly whether what the disputants bring into the discussion is relevant to the task or not. Facts that the disputants mention about the behavior of the other party may be important for understanding the situation. The issue is not so much that discussion about the party's actions can shift the focus on the past as it is how the past is talked about. Discussing the party's negative

actions provokes an argument, and does not contribute to solving the task at hand. Thus, bringing in the event that depicts one of the parties unfavorably and focusing on the party's behavior is unproductive and considered to be off-task.

Parties' interests. Another topic the mediator treats as improper is the parties' interests. Disputants attend a mediation session as they need to make arrangements for their children, so it is the children's interests that have to be taken into account in looking for the solutions to the problem and decision-making, not disputants' interests. Excerpt 33:12 illustrates how the mediator treats talking about parties' interests as an off-task topic.

The episode takes place at the beginning of the session after the mediator has explained to the disputants the purpose of the meeting and the conciliation court. The mediator initiated the discussion on the parties' concerns about their son Chris and what things they would like for him. However, the (ex)-wife in her turn refers to the fact that her (ex)-husband "has filed a custody suit" and has accused her of letting the elder son beat the younger one, which, according to her, is not true. The mediator interrupts her and repeats the question again. This time the (ex)-husband provides a conditionally relevant response.

Excerpt 33:12

12M: But uh what other concerns about Chris what would you like for Chris

13W: Well I want Chris with Now my husband has filed a custody suit that my twelve
        year old son from a previous marriage beats the five year-old, and that I stand
        by and don't do anything about it. Now this is very untrue, they are

[both my children   ]

14M: [Let me, let me back up] a little bit and ask you what you would really like for

Chris and Greg, not not for yourselves but for them.

15H: Want 'em to have everything that I been tryin' to give 'em=

In this excerpt, M (turn 12) asks W what she would like for her son. However, W

does not stay on the topic. The beginning of her turn ("Well I want Chris with") may seem

to go along with the topic M introduced as she makes the reference to Chris and focuses

on wants (turn 13). However, the way it is constructed makes it sound as self-interest

rather than concern about the son: she wants Chris to do something (supposedly, to stay

with her) rather than she wants something for him. Further on in her turn, W brings in into

the conversation H's accusation of her neglecting duties as Mom and focuses on restoring

her image as a responsible parent. M interrupts her and repeats the initial question with a

slight change (this time both sons are mentioned) (turn 14). In turn 15, H provides a

conditionally relevant response by stating what he would like his children to have.

The mediator tries to keep the disputants on task by crafting a topic the disputants

should engage in. The mediator initiates the discussion that focuses on the child's needs

and interests. When the (ex)-wife does not pursue this topic, the mediator directly points

out again that the focus of discussion should be the children's interests ("what you would

really like for Chris and Greg, … for them") and not their own interests ("not for

yourselves"). The former fits the agenda of the mediation session, which is to make

arrangements that are best for the children. The relevance of this topic for the goal of the

encounter makes it institutionally appropriate and on-task. The latter is framed as the

opposite to the former topic, which indicates that the parties' interests are not a proper

subject matter for this setting. The participants are going off-task when they bring in their interests into the discussion, and the mediator discourages the development of this topic.

   Financial issues. Discussing financial issues is not always considered irrelevant by the mediator. As it has been mentioned before, mediators themselves occasionally bring in financial matters into the discussion to get a better picture of the parties' situation. However, when the parties initiate this topic, the mediator intervenes to close the discussion. It can be illustrated by the following example. In excerpt 34:181, the focus of the discussion was on the (ex)-husband's visitation time. The (ex)-wife does not mind her (ex)-husband spending time with their daughter beyond the weekends but she suggests that there should be some structure, as far as the visitation is concerned, as it is in the daughter's interests, as well as theirs. However, in response to his (ex)-wife's comment, the ex-husband raises a question of financial support, and the mediator immediately makes a move to bring the topic to its end.

Excerpt 34:181

181W: No, if if you saw her Sunday three p.m. to Tuesday three p.m. and then let's say
          on Thursday night you had some things you wanted to do say take her to a
          movie or whatever I'm not going to say no. I'm not going to say well legally
          your not allowed to do that so forget it.

182H: And what what what uh

183W: It's just that she needs some structure to this. And so do we.

184H: You need some structure by having me pay for you

185M: Okay n[ow okay]

186W: [That has] nothing to do with what I'm talking about Arnold

187M: Okay i[t it   ]

188W: [Money] has nothing to do with this at this point=

189M: =It does and it doesn't all right?

190H: It does [it does matter   ]

191M: [What's real important] what's real important Arnold is to come up with a

         plan that is good for Valerie. Apart from the money, Valerie simply needs to

         be with both of you.

192W: Right

193M: Okay after that's worked out then either the attorneys or the judge will work

         out the money.

    In this example, in turn 184 H brings in a financial issue saying that W tries to

make him pay for her. W picks up this issue in turns 186 and 188. She resists the shift in

the discussion by pointing out the irrelevance of the financial matter to what has been

discussed before. In this way, she seems to orient toward staying focused on the task. M

intervenes in turns 185 and 187 with the topic termination marker "Okay". Both times M's

turns get overlapped. Then in turn 189, M makes a statement that both parties have a point

regarding the relevance of money to visitation arrangements, which is taken by as an

opportunity to continue the discussion on the financial matter. However, M immediately

takes an action to close up the topic. M takes a turn at the first possible transitional place

and continues regardless of the overlap with H's turn. M points out that the agenda for the

current meeting is to create a good plan for the child (turn 191), which gets supported by

W (turn 192), and the financial issue should be resolved outside of the mediation session

by attorneys or the judge (turn 193). Thus, M states directly that discussing financial issues is off-task.

In this example, the mediator opens a possibility for the parties to develop an institutionally inappropriate topic and, and at the same time highlights the institutional preferences of the mediation session to terminate it.   Although mediators occasionally inquire about financial matters in the course of the session, they do it in a manner of gathering information to get a better picture of the situation. The disputants bring in financial issues as a problem to be resolved, which is not related to the goal of the meeting. The fact that this topic is the least frequent one that mediators initiate across all the sessions is also evidence that this topic is out of scope of the session agenda.

Court process. Similar to discussions on financial issues, discussions on court procedures are not necessarily considered to be inappropriate. For example, the mediator can introduce the topic of court process to give the parties a better idea of how their disagreement can be resolved. However, when the parties start talking about things that have more to do with the court process rather than the mediation session, the mediator finds it irrelevant as it can be seen in the following example. In the conversation that preceded excerpt 60:387, the (ex)-husband referred to the event that depicted his (ex)-wife in an unfavorable light, namely, sleeping with men in front of their kid, and the (ex)-wife denied the fact. In the excerpt below, the mediator mentions that the disputants may have witnesses in order to support their claims. Further on, the (ex)-husband makes a comment that his (ex)-wife might have deceived her witness and brings in into the discussion the penalty of purgery and a private investigator. The (ex)-wife opposes her (ex)-husband's accusations. The mediator interjects the interaction and points out that the topic is off-task.

Excerpt 60:387

387M: =[[Well that's why you have your that's why you=

388W: [[Well maybe you should have brought her too

389M: =both may have your wit[nesses I suppose   ]

390H: [That's why her daughter's] here Karina uh you may

          be able to con her because, her mentality seems like yours [nin]th grade.

          OK=

391M: [Well]

392W: =I don't con [Tina I have nothing (   )]

393H: [Ok when she gets   ] up there [when] she's on the on the=

394M: [Do you] think this do you

          think

395H: =penalty of purgery and she knows there's a PI walking around PI just knows

          everything she's gonna say, and she goes up there and says something else we

          got somebody contradicting her, she's lookin' at purgery OK

396M: Well [OK uh   ]

397W: [So are you (Mike)]

398H: Regardless of whatever you tell her [to (do)   ]

390M: [You're really tal]king about court process

          now which we have nothing to do with [down here]=

391W: [I know (   )]

392M: =(   ) are those things developing the way you described them?

          (Nobody) knows I don't know. Your lawyers may have something (to tend

with) that ought to deal with you know. I don't know who they (   )

is really your lawyer's decision not yours [(   ]   ) I suppose=

393W: [(mine)]

394M: =in that sense but I think your talking about the kind of court thing that we

can't uh do much about down here because this is a voluntary (   )

agreement [(   )]

At the beginning of the episode above, the discussion centers on W's behavior and

personality. H depicts W in a negative way, that is, as being dishonest (e.g., "you may be

able to con her") and not smart (e.g., "her mentality seems like yours ninth grade") (turn

390). W denies conning her daughter (turn 392). M makes unsuccessful attempts to

interject in turns 391 and 394. H makes reference to the penalty of purgery and a private

investigator who is hired to follow W and focuses on the possible future event in the court

that may prove W guilty. These references also undermine W's image and can be

considered as the continuation of the topic on W's behavior and personality, which is off-

task, as it does not contribute to the agenda of the session. However, they are brought in in

the context of court process. This gives M an opportunity to frame the subject matter of

the discussion as the court procedures and dismiss it on grounds of being out of scope of

M's competence. In turn 399, 401, and 403, M points out that what H was talking about

was court process and it was not relevant to the process of mediation. M cannot validate

whether H's accusations are true or not, and it is lawyers who have to deal with this

situation. Thus, this topic is off-task.

When the mediator brings in court process into discussion, it is done as providing

the disputants with information on different ways to deal with their disagreement in regard

of visitation and custody matters, which is relevant to the task at hand. Parties need to be informed about options they have. In the example above, however, bringing in the court process is not related to working out arrangements for children. A disputant focuses on the court process in terms of an opportunity to discredit the other parent and how that can be done (e.g., having a private investigator to follow that person and gather evidence in order to present enough facts to make the claim acceptable). In this case, this topic is not relevant to what has to be accomplished in the course of the session.

Private matters. Another topic that mediators treat as irrelevant is certain aspects of private life of the parties or the mediator. The types of topics discussed above are off-task as they do not contribute to achieving the goal of the meeting because they are emotionally-charged and have potential for leading to a quarrel and/or inappropriate for the mediation session as they cannot be resolved in conciliation court. Talking about private matters is different in this respect. This topic is off-task as it is not related to the parties' dispute. Excerpts 61:111 and 9:650 illustrate this point. In excerpt 61:111, the improper topic is an aspect of the ex-husband's life. In this example, the focus of the discussion was visitation issues. In the discussion preceding this excerpt the parties talk about changes in visitation arrangements, namely, about making them more structured. One of the issues with the current visitation situation is that the ex-husband does not spend with the daughter all the time during his visitation period as he is supposed to do. The ex-wife mentions that quite often it is the ex-husband's present wife who takes care of the child. The ex-husband's problems with his present marriage are brought in. The mediator treats this private matter as irrelevant to the discussion.

Excerpt 61:111

111W: Well before I did this, you, were never the one that came to pick up Stephanie

          and drop her off anyway. As far as you were concerned you didn't need to see

          her.=Jenny picked her up and Jenny dropped her off, and you

          [took of and went   ] (fishing)

112H: [Jenny's my present wife.]

113W: (   )

114M: Um?

115H: I have problems with my marriage now.

116M: How do you feel about a structured visitation order like that Carry?=

117W: That's what I want to go by he's=

In turn 111, W makes reference to "Jenny". H interferes to explain to M that Jenny

is his present wife. In turn 113, W says something inaudible. M's "Um" signals the

necessity of repair (turn 114). Although M addresses his message to W, H self-selects to

speak next. He mentions that he has problem with his present marriage (turn 115). It is

possible to suppose that he initiates a repair of what W said as it would be a relevant

response to M's remark. In any case, M does not provide any response to what H said but

refers to W and brings the discussion back on the issues of visitation, which is picked up

by W in turn 117. This lack of even minimal acknowledgement of H's contribution serves

as an indicator that M treats the topic as off-task.

In excerpt 9:650 the improper topic is the mediator's private matter. In the

following example, the mediator was reading out a draft agreement to the disputants. One

of them addresses the mediator and asks him if the mediator has ever wanted to be an English teacher. The mediator treats the disputant's comment as irrelevant.

Excerpt 9:650

650M: Okay. Our son shall have as his primary place of residence his mother's home. The father shall be able to be with the boy at least two weekends each month. The weekends, and the day of the weekend, to be agreed upon by prior mutual agreement.

651W: Perfect.

652M: Okay?

653   ((PAUSE))

654H: [The day]

655W: [Have you] ever thought about becoming an English teacher.

656H: The day in the weekends? Uh, the day?

657M: Yeah the day, Saturday or Sunday

        Here, after M has read out loud the statement of the agreement, W makes a positive assessment of it (turn 651). "Okay?" in turn 652 may be a request for confirmation or assessment, and the next possible relevant turn would be making this assessment, expressing concerns, or confirmation. After a pause, H and W start their turns simultaneously, and H cuts off his turn. However, the turn W produces is not relevant to M's remark as it is an inquiry about M's life. M does not respond, and H takes a turn instead asking to clarify a point in the agreement (turn 656). Judging by the beginning of H's turn ("The day"), it is the same question he was going to ask in turn 654. M provides a

conditionally relevant response to H's question. Thus, by ignoring W's question, M treats it as off-task.

In these examples, the mediators keep the disputants focused on-task by pursuing on-task topics and not letting the development of talk on private matters. By doing this, the mediators prevent the interaction from shifting into side conversations that are not related to the disputants' issue. In contrast with the topics discussed in the previous sections, this topic is treated by the mediators as off-task from the start. Its irrelevance to the discussion is more or less obvious at the moment of initiation, which allows the mediators to cut off its development at an early stage.

To sum up, there are a number of topics that mediators treat as appropriate for the discussion and there are those that they treat as improper for the session. However, some topics (e.g., visitation issues) stay appropriate throughout the whole session, whereas others can be considered relevant in some cases and questioned in others. Topic is something that is struggled over. Part of the task is to define the agenda and work on the agenda. Just because there is a mediator, and participants are in a mediation center, it does not mean that mediation talk is going to happen. It has to be constructed along the way. Part of communication design is to craft and carry out an agenda that is relevant to disputants and relevant to mediation. I will focus on the issue of relativity of topic irrelevance next.

Relativity of Topic Irrelevance

The appropriateness of topics depends on several factors. First of all, it depends on who introduces the topic. As it was mentioned earlier, the mediator treats the topics on financial issues and court process as improper when the parties initiate them. At the same

time, they themselves bring in these matters into the discussion to get a better idea of the situation or to provide information to the parties. Secondly, it may depend on whether the initiated topic has a potential for the constructive development of the discussion. For instance, mediators tend to dismiss the private matters, however, they incorporate them into the discussion when these topics can be used to contribute to the main task of the session. This can be illustrated by excerpt 9:292.

In the following example, one of the disputants inquires about the mediator's private matters. She asks the mediator if he has kids at home. In contrast with excerpts 6:111 and 9:650, where the topics focusing on matters of the personal life did not get developed, in this particular case, the mediator does not terminate it. The mediator gives information about his family and focuses specifically on having a stepson and on how his wife and her ex-husband are dealing with the situation.

Excerpt 9:292

292W: Yes. ((PAUSE)) How many kids do you have at home.

293   ((PAUSE))

294M: Me?=

295W: =Yes

296   ((PAUSE))

297M: One.

298W: Mm.

299M: I have two children in their thirties.

300W: Grandchildren (   )=

301M: =Grandchildren ((PAUSE)) um ((PAUSE)) and uh ((PAUSE)) and I have a a

step a stepson who's sixteen ((PAUSE)) he lives with his father ((PAUSE)) he

used to live with us for quite a long time but ((PAUSE)) he lives with his

father ((PAUSE)) he used to live with us for quite a long time but ((PAUSE))

went to live with his father and that seems to be working out good, they, the

mother and father, work together very cooperatively, no problems whatever

302W: That's nice. It's nice to hear you hear all ((PAUSE)) about these terrible

divorces and these gigantic (   ) [all this stuff it's unnecessary]

303M: [Well it really is uh and and uh] for me as a uh

mediator of these things it's been uh interesting because uh, I see how it can

work, how well it can work, and the and the two children know that there's

there's never, uh a hassle between their parents. And uh

304W: (   ) I think they, the psychologist we'll tell me the most important thing

for a child is to feel very secure in the atmosphere. And uh I think if, these

parents that have separated make 'em go, from house to house (   )

((PAUSE)) [they're going] to damage them in the long run.

305M: [That's right.]

In the example above, M does not produce a relevant response immediately to W's

inquiry about kids in M's family (turn 292). First, there is a pause after W's question (turn

293). Then M checks if this question is addressed to him, which can be an expression of

surprise (turn 294). After W gives an affirmative response, there is another pause (turn

296). Only after that M produces a conditionally relevant response. The fact that M delays

the response in a number of turns may serve as evidence that this topic is not considered

appropriate for the current discussion. However, M picks up this topic and provides

information about his family situation, one aspect of which is having a stepson. M uses this aspect of his personal life as an example of the possibility for the divorced couple to work cooperatively on issues related to their children (e.g., "that seems to be working out good, they, the mother and father, work together very cooperatively, no problems whatever") (turn 301). In her turns, W expresses her understanding of the importance of working out the solution in a peaceful manner (e.g., "these terrible divorces", "all this stuff is unnecessary" (turn 308)) and creating a safe environment for the child (e.g., "the most important thing for a child is to feel very secure in the atmosphere" (turn 310). In this way, M turns a seemingly inappropriate topic into the tool for doing his job and keeping parties focused on-task. Thus, what is relevant for the discussion gets managed locally.

This flexibility of topic relevance can be partially attributed to the format of the mediation talk. The mediator provides guidelines for the participants' behavior as it can be seen, for instance, in excerpt 9:17 where the mediator states what topics on the past should be avoided and when the past events can be brought in. The rules are not rigid, and exceptions can be made when it is important for understanding the current situation.

Mediators' moves shape interactional possibilities. Sometimes these moves make institutionally dispreferred topics allowable. Topic is emergent. It is unfolding for mediators in real time. Although mediators have a general idea about what is appropriate to discuss in the course of the session, what is on-task or off-task is negotiated and constructed in the situation.

The essential point is that the setting does not determine the talk. The interactivity itself must be worked out on the fly, and the challenge is to meet the demands of the conflict and the demands of the mediation session.

To sum up, in the course of mediation sessions, participants construct a path for discussion about the conflict, and mediators draw certain assumptions about mediation/conflict talk to do this. The mediator is imposing a way of talking, and the topic serves as material for constructing a preferred type of interactivity. Some topics contribute to shaping an on-task mode of interaction, as they are oriented toward achieving the institutional goal of the meeting, while others lead the interaction off-track. The same topic can be treated as relevant or inappropriate for the discussion depending on several factors such as the initiator of the topic and the potential of the topic to contribute to the goal of the discussion. The format of mediation talk provides an opportunity for topical flexibility. What is relative for discussion is negotiated by participants on the fly.

Next, I will discuss how these findings enrich our understanding of the institutional talk, mediation one in particular, argumentation processes in the institutional context, and communication design.

Discussion

The Interaction Order and the Institutional Order

The analysis of linguistic details, turn taking, actions parties perform during mediation sessions, topics they raise makes it possible to see how mediators and clients enact institutions through their talk, how institutional the mediation talk is, and what is a tension between the interaction order and the institutional order.

Social epistemology and social relations. The analysis of topics discussed in the course of the mediation session shows how institutions are enacted at the social epistemology and social relations dimension of institutional talk. This aspect manifests itself in interactional asymmetries in terms of knowledge, participation, and conversational resources, which is reflected in who introduces topics, what topics, and how often. The fact that mediators initiate a new thread of talk more often than other participants of the discussion and control what is appropriate to discuss and what is not is evidence of this asymmetry.

In the course of the mediation session, the mediator's task as a representative of the conciliation court is to make sure that the participants stay within the boundaries of this specific institutional talk and discuss the issues that are on the agenda of the meeting. On the one hand, the mediator leads the interaction by launching the discussion on institutionally relevant subject matters. While the participants can introduce topics as well, they do this much less frequent than the mediator. On the other hand, as a rule, the mediator is the one who challenges the parties when they go off-task whereas the disputants do not question the relevance of the topics brought in by the mediator. However, the parties may occasionally do this with regard to each other.

It was found out that the same topic can be treated as relevant or inappropriate for the discussion depending on who is the initiator of the topic. When a disputant brings in, for instance, financial issues into the discussion, the mediator treats it as off-task. If the mediator initiates a thread of talk on this topic, it does not get questioned. On the other hand, if one of the disputants initiates the topic that is usually treated as off-task (e.g., private matters) but has a potential to contribute to the task at hand (e.g., an aspect of the

mediator's personal life can serve as an example for the disputants to resolve their issue cooperatively), the mediator takes on this topic. The off-task/on-task mode of topics is related to what participants are trying to accomplish by initiating a certain topic. For example, when mediators bring in a financial matter into a conversation, they do information-seeking to understand a case and orient towards the goal of the meeting. Disputants, however, raise financial issues to blame or criticize the other party and damage their image. Thus, the topic is constructed and negotiated as on-task or off-task on the fly, depending on its contribution to the institutional goal of the meeting at a given moment.

Sometimes, this asymmetry can be a contributing factor to the derailment of the interaction when the mediator, on the one hand, tries to terminate the topic development (e.g. the physical abuse in excerpt 59:520) and, on the other hand, contributes to the discussion on the subject by asking for information on the subject matter, thus opening possibilities for the parties to delve on this topic and to go off-task. In a way, the topic gets a life of its own. Then, the participants' mutual orientation toward the subject matter of the discussion and their orientation towards the task at hand are in conflict, and the mediator makes moves to balance this tension.

At the same time, this asymmetry is not static. Although the participants of the mediation session have pre-determined participation status (Garcia, 1991) and mediators, as representatives of the conciliation court, exercise more control over the direction of the interaction, they do not always have the interactional power. Due to the non-authoritative and flexible format of the mediation talk, the disputants have opportunities to disregard the mediator's status and pursue their own agenda. It can be seen in those instances when

the parties bring in off-task topics, and the mediator makes a number of attempts and uses different types of intervention to bring the interaction back on track.

A goal aspect of institutional talk. Another important aspect of the institutional talk is goal orientation. According to Drew and Heritage (1992), the institutional talk takes place when participants are orienting to the goal of a particular type of interaction rather than to personal ones. The objective of mediation sessions, which is creating arrangements for the children, sets constraints on the interaction in terms of what can be talked about during these sessions. Thus, the topics that the participants raise in the course of the interaction reflect whether the interactants are orienting to the goal of the mediation talk, or pursuing their personal agenda (e.g., destroying the other party or/and creating a positive image of oneself).

One of the dangers of focusing on topics for academic analysis, that Schegloff (1990) points out, is "not addressing analysis to what participants in real worldly interaction are *doing* to or with one another with their talk, with their talk-about-something, or with particulars parts of it: that is, all talk is then treated as talk-about, not as talk-that-does" (p. 52). In the case of institutional talk, looking at what talk is about can actually shed light on what this talk does. Topics that are part of the agenda the participants of a particular talk are working through have a known-in-advance status, that is, the interactants know at the start of the interaction what they are expected to talk about. This status makes the initiation of the topics that are considered business at hand and the transition from one topic to another legitimate and non-problematic (Button & Casey, 1988/89), whereas topics that are not part of the task-at-hand are more problematic to launch. Button and Casey argue that these topics, or items of business, provide for

activities to be accomplished, for example, the resolution of a court hearing or appropriate

treatment. Thus, depending on the focus of the discussion during mediation sessions we

can distinguish between doing mediation talk versus doing something different (e.g.,

doing a small talk). As this research shows, certain topics are more appropriate for the

session than others (e.g., visitation issues, custody issues, mediation session, collaboration

of the parties, ways to deal with the situation, agreement, and children's interests versus

parties' interests, physical abuse, and private matters). When the participants discuss, for

example, visitation issues, custody issues, or the rules of the mediation session, they are

orienting to the goal of this particular type of interaction, and thus, doing mediation talk.

When the participants bring in some private matters into the conversation (e. g., aspects of

the mediator's life such as considering a different occupation), they are orienting to a

small talk rather than mediation talk. In this case, they do not contribute to resolving the

task at hand and, thus, violate the institutional order. As a result, these topics are subject to

curtailing on the part of the mediator. When the participants bring into the discussion past

events that depict the other party in an unfavorable light, they are threatening the face of

that party. In this particular case, not only is the institutional order disrupted, but the

interaction order as well.

Taking into consideration aspects of dispute mediation as institutional talk and the

tension between the institutional order and the interaction order is vital for understanding

dispute and argumentation in the realm of argumentation theory. In the next section, I

will discuss how the findings on topics advance our knowledge of disagreement space and

strategic maneuvering.

Disagreement Space and Strategic Interaction

Mediation is a forum for deliberation and negotiation, so arguments are a common feature of this type of interaction. This study provides an opportunity to see how the argumentation process unfolds in non-ideal conditions in the institutional context and advances our understanding of argument as an interactive accomplishment.

Disagreement space. Like any argumentative discussion, mediation talk has its own disagreement space. The disagreement space is traditionally understood as a set of commitments, beliefs, and intentions of the speaker that can be challenged by another participant (Jackson, 1992) and is associated with properties of some speech act, for example, its felicity conditions (van Eemeren et al., 1993).

As it was discussed in Chapter 2, the disagreement space is dynamic. It is constantly changing based on the moves that participants make. This can be seen in respect to topic. Every topic that participants raise in the course of the interaction opens new opportunities for argument to emerge, although not all of them have the same potential for this to happen. For example, topics that are controversial or emotionally charged are more likely to lead to argument than neutral ones. Thus, in the way the participants coordinate their actions they mutually, although not necessarily intentionally, shape the disagreement space.

In the course of interaction what becomes arguable is constrained by interaction process and institutions. By introducing institutionally appropriate topics and terminating off-task ones, the mediator shapes the disagreement space and, to a certain degree, controls what can become arguable. For example, visitation and custody issues are

legitimate topics for argumentative discussion as they orient to the goal of the session, while the past events are not as they are emotionally-charged and are more likely to provoke a quarrel and divert the interaction from the main task. In the perfect critical discussion proposed by pragma-dialectics, ideally, any commitments, beliefs, intentions can get challenged. However, in the real, less than ideal situation, managing the disagreement space is constrained by the restrictions of the interaction order and the institutional order. The tensions that arise from the demands of the interaction order and the institutional order shape what gets argued about. The participants navigate between these restrictions using different resources and strategies, which will be addressed next.

Strategic maneuvering. It was mentioned in Chapter 2 that the strategic maneuvering manifests itself on three levels, namely, topical potential, audience demands, and presentational devices (van Eemeren & Houtlosser, 2001). In terms of topical potential, the mediator sets the alternatives relevant for the discussion in the introductory stage of the session limiting them to visitation and custody matters and tries to make the participants be focused on this agenda throughout the whole interaction while the participants may try to exploit topics to their advantage and initiate discussion on matters that are not relevant from the institutional point of view. As in the case of disagreement space, strategic maneuvering is limited by the interactional and institutional constraints of the mediation talk.

Topic and Communication Design

How the mediator shapes and uses disagreement space to develop the trajectory of argumentative discussion in the context of institutional talk can be understood in terms of

the reconstruction-as-design (Aakhus, 2003). Advancing the idea of communication as design, Aakhus (2003) states, "the dispute mediator may be taken as a designer, the context of the dispute as the environment, and dialogue and disagreement space as objects of design" (p. 285). However, communication design is not just an act of an individual designer; it is rather an emergent creation of all the people participating in the interaction or a designing system (Schon & Rein, 1994). Although the mediator does play an active part in enforcing a certain form of talk, we cannot dismiss the role of the parties in constructing the talk and its on-task/off-task modes. The mediator uses the local resources, that is, what the parties make available in the course of the interaction, to shape the discussion. Thus, what we have here is co-design.

The important point is not so much that the opportunities are intentionally or unintentionally created but that the unfolding interaction provides *affordances* that can be exploited or that may be blocking the discussion without anyone noticing that. As it was mentioned earlier in this chapter, one of the advantages of the mediation talk as a multi-party discussion is that, when addressed by the two parties, mediators can choose who to give a conditionally relevant response to. But the important point here is that the parties create this opportunity for them, as, for example, it happened in excerpt 9:650, where the wife's question for the mediator was followed by the husband's inquiry. The husband's on-task contribution let the mediator dismiss the wife's introduction of the topic off-task in an indirect manner without providing an account for it. Another example is when a party initiates an institutionally inappropriate topic, which gives to the mediator a chance to reinforce the cooperation between the parties, as it was illustrated by excerpt 9:292. The research shows that what is relevant for mediation talk will vary depending on the

model of rationality that mediators use to handle disagreement (critical discussion, bargaining, or therapy models) (Jacobs & Aakhus, 2002a). But it also depends on what potential initiated topics have for how the mediator can incorporate them into the discussion to craft an on-task mode.

On the other hand, Schon and Rein (1994) state it is inevitable that design moves can result in unintended effects, either negative or positive. The way the mediator's moves are constructed can open possibilities for the participants to go off-task. At the beginning of the session, the mediator briefly explains the nature of conciliation court, introduces an agenda for the meeting, and tries to set up a collaborative mood. However, the mediator gives only a general idea of what is going to happen in the course of the session and what actions would be appropriate for the meeting, which lets disputants initiate topics that do not contribute to the institutional goal of the meeting. The mediator can give vague instruction further in the discussion, too. For example, the guidelines that the mediator gives about making references to past events are not very specific. The mediator leaves it up to the participants to decide what information is necessary to bring in. This vagueness on the part of the mediator, on the one hand, contributes to generating the atmosphere of collaboration as the parties are treated as responsible and reasonable parties who take an active part in creating the interactivity. On the other hand, this move allows the participants to bring in the events that may be important from the point of view of the speaker but not necessarily contribute to the goal of the meeting.

Different things afford different possibilities for action (Hutchby, 2001). As far as the interaction is concerned, topic can be considered as a kind of affordance of discussion. It grounds the material for discussion. Thus, constructing topics influences the affordance

of the discussion. It can constrain the participants' actions, on the one hand, and create possibilities for them, on the other one.

Topics, like references, evoke a particular framework of participation. Topics are used as a way of structuring the interaction to achieve the goal of the meeting and, in turn, shape the inferences to be drawn and the direction to work in. The introducing of a certain agenda puts constraints on how the participants proceed during the discussion stage. The analysis of topics advances understanding of how people craft a certain type of interactivity and lays grounds for examining on-task and off-task modes of interaction at the level of dialogue activities. However, what interactants talk about is only part of constructing an on-task mode of the interaction. Disputants may engage in an on-task topic but the way they talk about may be unproductive and detrimental for the process of deliberation (e.g., having a quarrel about visitation issues). This ties back to Schegloff's (1990) point that it is important to address what interactants are doing with their talk-about-something. Thus, how participants of a mediation session talk about their issues is crucial for the process of deliberation. To keep the interaction going in the right direction, the mediator initiates dialogue activities that are appropriate for the mediation session, which will be described in the next chapter.

CHAPTER 6

DIALOGUE ACTIVITIES AS INDICATION OF BEING ON-TASK/OFF-TASK

This chapter continues the line of research done in chapters 4 and 5 on on-task/off-task modes of mediation activity. It analyzes what dialogue activities are treated as on-task and off-task with the purpose of getting insight into how the interactivity in the course of mediation sessions is constructed.

Mediation as a Type of Activity

Argumentation scholars sometimes equate mediation with a certain type of argumentative activity (Eemeren & Houtlosser, 2005) or a kind of dialogue type (Walton, 1998). Walton (1998), for example, considers mediation to be an example of negotiation type of dialogue that presupposes conflict of interest. The aim of this type of dialogue is personal gain. It has its specific features such the commitments of participants towards some course of action, the structure similar to the critical discussion, and moves that fit its structure and goal of this type of dialogue (e.g., threats).

Eemeren and Houtlosser (2005), in their turn, distinguish mediation as a conventionalized type of argumentative activity that is distinct from negotiation and adjudication. They argue that mediation involves a difference of opinion rather than conflict of interests. Like critical discussion, it develops through four stages of argumentation.

Dispute mediation, however, is a more complex activity than pictured in either of these two approaches. Clark (1996) points out that one "activity can be embedded within another" (p. 32). Examining mediation activity as it occurs naturally shows that this process is multidimensional as it is accomplished through various dialogue activities. It

involves negotiation, information exchange, recommendation giving, and clarification among other dialogue activities. The point of models such as Walton's or van Eemeren's is to simplify the complexity of an activity in relevant and meaningful ways. In some sense, different stages of an argumentative activity imply that other kinds of activities are necessary for this activity to develop. However, all these stages are argument-oriented. The problem is that both models take an argument to be a primary activity as opposed to Jacobs and Jackson's (2006) idea of argument being subordinate to some other kind of activity. In dispute mediation, not all dialogue activities involve argument. When it arises, it serves as a repair mechanism for the mediation activity.

Another problem with these approaches is that they are normative and consider mediation in terms of some ideal type of interaction, whether an argumentative activity type or dialogue type. However, activity types are never given; they are produced. This production is a joint achievement of all the participants. Speaking about joint activities, Clark (1996) states, "One reason joint activities are complicated is two or more people must come mutually to believe that they are participating in the same joint activity" (p. 36). The development of the activity involves constant negotiation of the interactants of what they are doing in a given moment and of what they are trying to accomplish. The participants of the activity have different sets of responsibilities (Clark, 1996). These responsibilities and the actions participants perform "depend on the role they inherited from the activity they are engaged in" (Clark, 1996, p. 34). In the course of the mediation session, the mediator has a leading role and tries to design talk in a certain way, to institutionalize it in the sense that they are disciplining the performance through language use. The institutional goal of the mediation session puts constraints on what can be done

in this interaction. The mediator contributes to institutionalizing the talk in the moment of the session by advancing certain dialogue activities and preventing others. However, what is on-task or off-task is negotiated and constructed in the course of interaction by all the participants.

Walton and van Eemeren and colleagues emphasize the use of discourse as a basis for realizing what the arguments are in a dialogue, that in turn is a way of doing informal logic analysis of argument quality. The focus of the current study is on argumentative conduct and the qualities of reasoning realized in the joint performance of activity. This draws a different kind of attention to understanding and evaluating argument, that is, evaluating argumentation and the actions performed to construct a dialogue quality.

Another feature of joint activities is multiple goals. While one goal can be dominating (e.g., for the mediation activity it is an institutional goal of making arrangements for the children), participants can also pursue procedural and interpersonal goals and have private agendas. Thus, disputants can have agendas of their own and engage in shaping an interactivity that is different from what the mediator is designing. This can lead to interactional tensions.

In this respect, what is of interest here is how on-task/off-task modes of the mediation activity are negotiated at the level of dialogue activities, how the mediator's contributions construct a preferred form of interactivity, and how participants manage the tensions between the institutional preferences for on-task interaction and the way participants might otherwise engage each other.

Analysis of Dialogue Types

To distinguish on-task/off-task dialogue activities, I examined the whole corpus of transcripts of mediation sessions. Dialogue activities are goal-oriented verbal exchanges that carry constraints on contributions and participation and that get realized as sequences of smaller actions (Clark, 1996; Levinson, 1992; Walton, 2000). Thus, the identification of dialogue activities is based on the participants' moves, their sequencing, word choice, and the way the participants' roles are framed. Participants' moves, in particular mediators' interventions, were examined in regard to their orientation toward a certain dialogue activity as either being on-task or off-task. The reason for taking the mediator's moves as a source for determining on-task and off-task modes is that mediators act on behalf of the conciliation court and orchestrate the activity. Dialogue activities that contribute to the overall goal of the session are treated as on-task. I did not count the number of times these dialogue activities arose and did not determine their exact boundaries in all the cases, as the purpose of this project is to explore what is treated as on-task and off-task and how it contributes to constructing a particular interactivity.

The identification of off-task dialogue activities is based on mediators' interventions. The procedure for the selection of examples was following. First, I started with clear examples, where the mediator explicitly signals or frames that what disputants are doing is off-task (e.g., when the mediator states that the disputants engage in an off-task activity). To describe the nature of dialogue activity I examined the participants' moves preceding the intervention. Then I developed the criteria that explain why the actions are off-task and this generated categories of the ways that disputants are off-task (i.e., inappropriate dialogue activities and untimely dialogue activities). Then I moved to

less obvious examples where mediators signal off-task dialogue activities in a less direct way (e.g., by initiating a shift to a different dialogue activity). Mediators' interventions signaling or framing the actions of disputants as off-task are discussed in Chapter 7.

The following sections describe on-task and off-task dialogue activities. The chapter concludes with the discussion on how these practices contribute to understanding mediation activity and argumentation issues.

<center>*Types of Dialogue Activities*</center>

*On-task Dialogue Activitie*s

Some dialogue activities that arise in the course of mediation session are treated as institutionally preferred, others are disprefered. On-task dialogue activities are institutionally preferred dialogue activities as they contribute to the goal of the mediation session. These dialogue activities can be grouped into three categories (see Table 4.1). The first category includes dialogue activities that are orienting to the process of dispute resolution in the immediate setting (e.g., information seeking, clarification, and negotiation). The second category consists of dialogue activities that situate things outside of the session and orient to the progress of the case in future (e.g., recommendation giving and recommendation seeking). The third group includes dialogue activities that focus on maintaining the mediation process (e.g., instructing, inviting, apologizing, and praising). Inviting, apologizing, praising, and instructing can be also separate actions but they are defined as dialogue activities as they involve a verbal exchange. Next, I will discuss these categories and provide examples for each of them.

On-task dialogue activities orienting toward the dispute resolution. This category comprises a number of dialogue activities that contribute to resolving disputants' problem

in the course of the current mediation session (e.g., information seeking, negotiation, clarification, therapeutic discussion). They are an actual attempt to work out the agreement. For example, in the following excerpt the mediator makes a shift from explaining the goal of the mediation session to information seeking. The mediator gathers information about the disputants' current condition.

Excerpt 59:1

1 M: …here, so we should start out with my function, why you're here, um, although you know why you're here but in other words our role is to see if we can work out an agreement between the two of you on, three items particularly legal custody, visits to the children and the amount of time to visit the other parent. Any combination of those in reality ((PAUSE)) uh, first thing I don't know whether you have any existing rules already, or is this uh brand new

2 H: Since [January   ]

3 M: [You do have 'em.] Is this a repeti- I mean a uh ((PAUSE)) change from that then somebody's requesting or

4 W: It's [temporary]

5 M: [What state of af]fairs are you in right now

6 W: Temporary conditions

7 M: Okay. Uh- somebody wants to change the one that's now in effect ((PAUSE)) that you have already on the books

8 W: Mhm

At the beginning of turn 1 M sets up the scene of the session by explaining briefly to the disputants what is going to happen in the course of the session. By doing this, M

gets the disputants focused on the goal of the meeting. At the end of the turn, M initiates a shift to an information seeking dialogue activity, which is constructed as a sequence of questions followed by conditionally relevant responses. M asks questions to get or to confirm information about the disputants' current state of affairs and intention to change the arrangements (turns 1, 3, 5, and 7). The disputants, in their turn, provide or confirm this information (H in turn 2 and W in turns 4, 6, and 8).

The dialogue activity of information seeking that arose in this episode is institutionally appropriate as it contributes to the goal of the meeting. It is an on-task activity as it is necessary for the mediator to familiarize with the disputants' situation. This on-task dialogue activity is mutually produced and negotiated by all the participants, and their contributions depend on their role in this interaction. The mediator's moves alter the development of the interaction and contribute to the shift to information seeking. This shift, however, is jointly achieved as the disputants produce relevant responses. The mediator initiates the dialogue activity of information seeking, while the disputants as clients follow the mediator's lead.

On-task dialogue activities situating things outside of the session. This category consists of dialogue activities that do not directly contribute to working out an agreement in the course of the session but are on-task in terms of situating things outside of the session that are relevant for the progress of the case in future (e.g., recommendation giving and recommendation seeking). Excerpt 9:25 is an example of the dialogue activity of recommendation giving. Prior to this excerpt the participants engaged in the dialogue activity of information seeking.

Excerpt 9:25

25 M: What does this psychologist say to you about things that you can do to help,

              uh, Oscar to gradually feel more comfortable with his Daddy.=

26 W: =Never, never to degrade Jack in front of him and to try to build him up and,

              to try to um maybe help them work through their relationship.

27 M: Yeah one of the things I think you might try to do is, you know, if you talk

              about the times when he will feel different.

28 W: Right.

29 M: That's not saying that's going to be tomorrow or next week or even next month,

              but you talk about it as though it's going to be a fact.

30 W: Right.

31 M: Oh. That let's him know that you're not gonna press him, so that he's- he's not

              doesn't become overanxious about it. It also lets him know that you think it's

              okay.

32 W: Right.

33 M: It also let's him know that you expect that eventually, that that's when he will

              be, maturing you know, meaning he'll be a big boy when he, go with his

              Daddy

34 W: Positive rein[forcement]

35 M: [Yes Yeah] right uh positive reinforcement, and uh, there's a lot

              of different ways that you can do that you know and there's times when, let's

              see, you may see a boy and his Daddy alone and they're doing something and

              you'll say, Hey isn't that nice that boy's having a nice time with his Daddy and

someday you're gonna be doing that uh

36 W: Yeah=

37 M: =with your Daddy. There's a lot of ways to- to reinforce that in a positive way

so that he will get the idea, first of all I think it's important he isn't pushed

because he'll only become more phobic, [about it]

Turns 25 and 26 are part of the dialogue activity of information seeking. M asks W what the psychologist told W to do to help her son to be more at ease with his father (turn 25), which is followed by W's response (turn 26). In turn 27, M initiates a shift to the dialogue activity of recommendation giving. M tells W what to say to her son and at what moments, which W acknowledges (turns 27-37).

This dialogue activity does not contribute directly to dispute resolution in the course of the current session. It is on task, however, as it provides the disputants with a course of actions outside of the session that will facilitate putting into practice the agreement reached in the course of the meeting. Similar to the dialogue activity of information seeking in excerpt 59:1, recommendation giving in this episode is mutually accomplished. All the participants are orienting to the same dialogue activity, acting according to the participation roles it imposes on them. The mediator makes recommendations, and the (ex)-wife displays her engagement in this dialogue activity by acknowledging the mediator's moves (e.g. tokens "Right" in turns 28, 30, and 32, and "Yeah" in turn 36) and expressing her understanding of what the mediator tells her to do (e.g., "Positive reinforcement" in turn 34).

On-task dialogue activities maintaining the mediation process. This category includes extra dialogue activities that are not directly related to the task at hand but focus

on maintenance of the mediation process (e.g., instructing, inviting, apology-making, criticizing, and praising). For example, in excerpt R200:30 the participants engage in the dialogue activity of apology-making. The phone rang in the middle of the discussion, and the mediator answered the phone. The mediator apologized for the interruption.

Excerpt R200:29

29 H: [She did bring   she did   ] bring the police with her, down around,

    because she told the police that my son had cigarette burns all over his body. I

    brought my son downstairs, undressed him, police officer looked at him, she

    said now see what he's doing, I (I brought him up, ( ), policeman told her

30 M: Excuse me=

31 H: =Mhm

    ((M talks on the phone; H and W discuss between themselves))

32 M: Sorry again for the interruption

33 H: Mhm =

34 W: =Okay

35 H: So anyway the, police officer, checked my son, didn't find any abuse

    ((PAUSE)) (   ) was with him, went back downstairs, and told her, you

    keep harassing this man and keep calling the police on him I am going to arrest

    you.

    In this episode, in turns 30 and 32 M offers the apologies for answering the phone and interrupting the interaction. The disputants accept apologies in turns 31, 33, and 34. In turn 35, H returns to the preceding discussion.

Apology-making does not directly contribute to dispute resolution but it contributes to creating a non-confrontational mood of the session. The disruption of the interaction order has happened, which requires a repair, that is, an apology. By apologizing, the mediator mitigates the threat to the disputants' face and enables the interaction to carry on. As in the previous example, all the participants jointly produce this dialogue activity. The mediator initiates it by expressing an apology, and the disputants display their orientation toward it by providing conditionally relevant responses, that is, accepting the apologies.

Mediators frame a meeting as collaboration of all the parties (i.e., M, H, and W) to make a beneficial arrangement for the child (e.g., "we should start out with my function, why you're here" and "our role is to see if we can work out an agreement between the two of you on"). Disputants, however, do not necessarily see themselves as *we* and do not necessarily collaborate in creating an activity they are supposed to engage in, that is, working out an agreement, as it was mentioned above. They can drift away from the main task, and the interactional frame of the couple's activity can be in conflict with the frame the mediator projects. For example, in excerpt NR3:105 the mediator indicates that the parties have diverged from the main activity and engaged in accusing each other.

Excerpt NR3:105

105M: [Do you see what you're both [doing

106H: [she

107M: Wait wait wait just hold it. I know you have a lot of anger towards one another
             and all that but that's not going to help us resolve=

107H: =No=

108M: =You're your plans for the children OK, and, the both of you can sling a lot of

           mud at each other but that's not going to help us

In the opening speech, M set up the agenda for the meeting and articulated the

rules and goals of the discussion. The participants are expected to interact in a different

way than they did before and to direct their efforts to working out together a plan for their

children. Instead, they collaborated in creating a conflict situation, and M had to interfere.

M opposes H and W as a unit ("the both of you") to all the participants of the session,

including M, as a team ("us") and their actions (i.e., slinging mud at each other) to what

they all are supposed to do (i. e., to resolve the dispute). It is mediators' task to keep them

on track and bring the dispute back on track, when these shifts in a dialogue activity

happen. Before turning to the problem of how mediators manage to do this, which is the

focus of chapter 7, in the next section I will discuss what dialogue activities mediators

treat as off-task.

Off-Task Dialogue Activities

There are two types of dialogue activities that mediators make moves to

terminate; the ones that are treated as not appropriate for a mediation session in general

and the ones that are not necessarily inappropriate in their nature but are initiated by the

participants at the wrong time.

Inappropriate off-task dialogue activities. This category includes off-task

dialogue activities of having-an-argument. O'Keefe (1977) distinguishes between

making-an-argument and having-an-argument. In the first case, an argument is a speech

act "which directly or indirectly support or undermine some other act by expansion along

… a set of logically related propositions known as felicity conditions" (Jacobs & Jackson, 1981, p. 126). In the second case, an argument is an activity that presupposes "some exchange of disagreement that extends an initial open clash" and does not necessarily involve reason-giving (Jacobs & Jackson, 1981, p. 127). Having-an-argument is institutionally dispreferred as it does not contribute to resolving a dispute and creating arrangements and is likely to lead to escalating the conflict. The content of having-an-argument would revolve around the issues of negative features of one's personality and actions. Although the topic is a common characteristic for these dialogue activities, what distinguishes this dialogue activity is mutual performance of the participants, the stance they take towards each other through the use of language and different moves they make. When the disputants engage in having-an-argument, the disputants would take on the roles of people in conflict and become oppositional. In the prototypical case of having-an-argument the disputants would hit each other verbally[2] and focus primarily on the character of the other party. They would use offensive language, make insults, accusations, challenges, threats, and the like. There will be exchanges of disagreement but the following moves would not provide support for the claims and would not be necessarily connected to the preceding moves in any rational way. The moves can be also recycled in an aggravated form. This type of performance is off-task as name-calling affects the quality of interaction. The way the interaction unfolds does not allow the participants to share opinions. These moves also present a threat to the image of the disputants. Thus, the disputants focus on the restoring their image rather than working out an arrangement.

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[2] That is what Walton (1995) calls a quarrel, and Jacobs and Jackson (1981) describe as having an argument without making arguments.

In more subtle cases, the opposition described above would not be so obvious. The disputants would try to prove who is right or wrong by bringing evidence that depicts the other party unfavorably. It is not a pure case of having an argument without making an argument. Instead, the making of arguments is done in such a way that undermines the image of the opponent (i.e., it carries what Aakhus (2003) calls *negative collateral implications*) and treats the mediator as a judge. The disputants would make assertions, often addressed to the mediator, about the other disputant's character or actions. The disagreement would develop over the sequence of moves as the participants would provide support for their claim, objected to or countered by another participant. These subtle cases are problematic for interaction as well, as the disputants use the mediator to attack the other disputant and prove that they are bad, which is likely to develop to a primitive argument.

Excerpts 33:130 and 37:184 illustrate how this dialogue activity unfolds. Prior to the episode in excerpt 33:130, the disputants were having a quarrel about custody issues. The (ex)-wife was accusing her (ex)-husband of his intentions to take the child away from her and expressing her determination not to let that happen. In the episode below, it is the (ex)-husband who takes an accusatory position. He claims that his (ex)-wife is not acting as a good mother as she does not take care of their child all the time, which the (ex)-wife denies. The mediator makes moves to terminate the development of the dialogue activity.

Excerpt 33:130

130M: OK now the other thing is

131H: If she's [uh you know not] a fit mother or something=

132M: [a temporary order]

133H: =y[ou know] if she's not in some way=

134W: [I'm not]

135H: =[capable of   ]

136M: =[Is she un- is she un] fit?

137H: =coming home,

138M: Is she u[nfit?

139H: [No she's a fit mother when she is at home

140W: Oh my [God

141H: [But you know I don't know my my [uh in laws take] care of =

142M: [Okay there's   ]

143H: =[him] all the time now=

144M: [OK]

145W: =[No they do not   ]=

146H: =[from what I understand]=

147M: =[OK let's   ]=

148H: =[She doesn't come home at night]=

149M: =We're not this is not a, [trial]

150W: [I have] been ho[me every]=

151M: [Lucille   ]=

152W: =[single=

153M: =[Lucille

154W: =night [Brent

155H: [You would be investigated.

156M: Hey Lucille excuse me, [we're not,   ] this is not a trial

157H: [What do you want]

158W: You disgust me=

159M: =Okay

160W: You are a disgusting person Brent

161M: [Lucille]

162W: [You will] lie ah ((WHISPERED)) God=

         [You're gonna get yours in the end (   ) you watch] it.

163M: [Excuse me,   Lucille   excuse me please.   ] Okay w- we're not

         trying the case, I don't wanna hear any more arguments. All I wanna do now is

         see if there's anyway you two can agree to some sort of temporary plan

         because if you don't, then the court can help you with that.

       In turns 130 and 132, M makes moves to refocus the interaction on the task at

hand by providing a minimal response to the preceding move and introducing a new

topic, which is a temporary order. However, H interrupts and makes a claim that W is not

capable of taking care of their son. In turns 131, 133, 135, and 137, he makes an attempt

to justify his intentions to have the child with him by depicting his wife as not being a fit

mother all the time, which is opposed by W in turn 134. Instead of pursuing the shift

initiated in turns 130 and 132, M gets engaged in the current dialogue activity. While H

shapes his accusation of W's behavior in a mitigated manner by using the conditional

mood, M asks H directly if he considers W to be an unfit mother in general (turns 136

and 138). M's move opens a possibility for the current activity to continue. H makes a

statement that W is fit when she is at home (turn 139). Further on, he makes a point that his in-laws take care of the child all the time (turns 141 and 143) and W is not at home at night (turn 148). He warns W that she will be investigated (turn 155). Thus, H does not call his W unfit directly but references he makes and facts he brings into the interaction depict her in a negative way. W expresses her disagreement in turns 140, 145, 150, 152, and 154. H asks W what she wants (turn 157). W attacks H's personality by using offensive language such as "a disgusting person" (turns 158 and 160) and by depicting him as a liar (turn 162). M makes a number of moves to stop the development of the dialogue activity and to make a shift in the discussion. M uses the marker "Okay" (turns 142, 144, 147, and 159) to indicate the termination of the dialogue activity and/or topic, addresses W by name (turns 151, 153, 156, and 161) to get her attention, and directly points out that H and W engage in an inappropriate activity (turns 149, 156, and 163). However, this dialogue activity continues, and M finishes the session.

In this episode, there is a clash of pursuing projects that are going on, the one that M is trying to enforce, and the one that H is initiating. H essentially makes a case that W is an unfit mother. W resists this. M gets involved in this dialogue activity, and his/ her move in turn 136 puts the disputants into antagonistic talk with each other. As the dialogue activity of proving who is right or wrong continues, H and W exchange accusations of each other. M intervenes as this dialogue activity is likely to escalate the conflict, which indeed happens later in this episode (turns 155-162). H is making a claim, W denies. Though it can be proven, M does not tolerate this exploration. According to M, the parties' moves construct a dialogue activity that is more appropriate for the trial (e. g., "this is not a trial" (turns 149 and 156), "we're not trying the case" (turn 163).

Attacking each other and defending themselves are the moves that the participants make in the court. In order to convince the judge and win the case, they have to present themselves in a positive way and discredit the opponent by different means. However, undermining the image of the opponent is improper for the mediation session (e.g., "I don't wanna hear any more arguments" (turn 163)). The mediator does not make any decisions so there is no point in convincing the mediator in their rightness. What we have here is two different designs for talk that reveal differing kinds of rationality. A classic feature of mediation sessions is focus on future. A trial, on the contrary, is about adjudicating about the past, getting the truth, distributing the blame, and assigning punishment. At the beginning of the episode, H was giving facts about the situation. However, in the progression, the talk is becoming about a character. It is not a simplistic argument the disputants engage in. In this episode, it is having an argument in the process of making an argument. As the interaction progresses, however, this dialogue activity develops into primitive argument and quarrelling. The disputants are not making arguments any more but are merely exchanging disagreements. While, earlier in the episode the focus was on W's character, here, W makes moves to hit H verbally and depict him unfavorably. The conflict escalates through a challenge (e.g., in turn 157, H challenges W with his question), through insults and recycling prior moves in aggravated form (e.g., a generalized assessment of H's personality "You are a disgusting person Brent" in turn 160 is stronger than a specific one "You disgust me" in turn 160), and through an accusation ("You will lie" in turn 162) and a threat ("You're gonna get yours in the end (   ) you watch it" in turn 162).

M intervenes directly to reframe the talk. M reminds the parties what they are supposed to do during the session, namely, they have to work out a temporary plan together (e.g, "All I wanna do now is see if there's anyway you two can agree to some sort of temporary plan" (turn 163)). The words M uses create a contrast between what H and W were doing (i.e., having a quarrel) which implies disagreement and separation) and what they should do (i.e., they have to agree to a plan, which implies some kind of union). In this way, M once again emphasizes the necessity of collaboration between H and W.

This episode is an example of two lines of dialogue activities that are in conflict. The disputants engage in having an argument and orient toward proving their own position. The activity of defining who is right or wrong is not appropriate as this can not be established. The mediator treats this as not possible and not part of mediation. Instead, making arguments must be geared toward advancing a plan for managing the children. The mediator's moves are geared to shift this dialogue activity to the planning discussion and put the disputants into different social relations. Jacobs and Aakhus (2002a) point out that mediators often show no interest in resolving the points of clash and discourage the elaboration of the disputants' positions through making arguments. Mediators do not cut off all the arguments, however. In planning or negotiating, the disputants can still make arguments but on a different issue, that is, they can make arguments that have to do with the future focus, not the past.

In the previous example the mediator was the one who indicated an inappropriate activity. The disputants themselves can recognize that they are off-task. For example, in excerpt 37:204 it is one of the parties, namely the (ex)-wife, who refers to the activity of

having an argument and points out that she would not like to engage in this dialogue activity. The disputants exchange a number of accusations. The (ex)-wife raises doubts about her (ex)-husband's good intentions to have their daughter Alison to live with him and not giving a Christmas gift to Alison. In his turn, the (ex)-husband accuses his (ex)-wife of neglecting their child and being a cause of relationship issues between her and Alison. Finally, the (ex)-wife makes a move to stop the current dialogue activity.

Excerpt 37:184

184W: Is that the only reason why you want her? I mean come on now or is it because you don't want to pay child support?

185H: I know this erroneous statement was going to come up let me point thus out to ya. When Alison did come over to me and signed all the papers over to me now I have of choice of whether I want to pay child support. This is a great thing about history you can't change what's happened in the past. When Alison come and live with me I didn't stop her allowance. I could have I give half of it to her for weekly allowance I put the other half in the bank for her future education or whatever she wanted to use it for when she got older. Her mother never comes and visited her one time in the year and a half

186W: Wait

187H: No somebody tell me I don't want to pay child support I did it of my own vol[ition nobody forced me to]

188W: [I didn't wait wait wait.   I] didn't come and visit Alison in the year and a half?

189H: That's right

190W: Wait just a minute okay? How many times did I go over to the house and take

Alison to the (   )? Did I or did I not go to your house and send

Alison a birthday present you didn't give her nothing for Christmas this year.=

191H: After the suicide attempt you're referring to?

192W: Yes=

193H: No I'm speaking up to the point of the suicide attempt=

194W: She wasn't speaking to me

195H: Oh

196W: I made the first attempt to go over there

197H: Why wasn't she speaking to you?

198W: Because we got into an argument in the front yard she called me a bitch

199H: Holds a grudge a long time doesn't she a year and a half?

200W: Me hold a grudge?

201H: No Alison

202W: Not me

203H: If that's the problem how come she held a grudge for a year and a half?

204W: Why isn't Kelly speaking to me now did I ever do anything to hurt her?

205H: Because she sees what's happening

206W: The only thing I want to say I don't want to argue with you okay? Whatever's

best for Alison

207H: My oldest daughter's first words were

((15 turns omitted as these continue the exchange in the manner of the preceding

turns))

223M: [[Lynelle you're saying that uh what is in the best interest of Alison?

In the following excerpt, W makes a supposition that H wants their daughter Alison to live with him because he is not willing to pay child support (turn 184). H denies this accusation and brings in the facts that can be evidence that W is wrong. In his turn, he accuses W of not visiting Alison once while she was living with him (turn 185). W challenges H's accusation (turn 188 and 190) and accuses H of not giving any Christmas gift to Alison (turn 190). In turns 191-193, H and W clarify to what time period each of them is referring. In turns 194-203, the focus of the interaction is on why Alison was not speaking to W. In turn 204, W questions H why their elder daughter Kelly is not speaking to her. H's point is this happens because Kelly sees what is going on between the mother and Alison (turn 205). In turn 206, W backs off saying that she does not want to argue with H and is willing to do anything that is best for Alison. Thus, she points out what activity they have engaged in, that is, having an argument, and makes an attempt to stop it. As the dialogue activity continues, M intervenes (turn 223).

Similar to excerpt 33:130, in the excerpt above, H and W make a number of moves that aim at proving who is right and who is wrong but at the same time depict each other in an unfavorable light. W's supposition that H tries to avoid paying child support (turn 184) and her accusation that he did not give any gift to Alison threaten H's face as these moves portray H as a bad father. In his turn, H creates an image of W as an unfit mother. First, he accused W of neglecting her duties as a mother (e.g., "Her mother never comes and visited her one time in the year and a half" (turn 185). Next, he did not accept W's explanation why Alison and she had had communication problems (e.g., "Holds a grudge a long time doesn't she a year and a half?" (turn 199) and "If that's the problem

how come she held a grudge for a year and a half?" (turn 203)). By expressing his lack of

understanding of how one quarrel could result in a year and half of not speaking to each

other and repeating the same question twice, H makes it clear that there should be a more

serious reason for a relationship problem between W and Alison, and W is likely to be

responsible for this. Speaking about the lack of communication between W and their

other daughter, he alluded again that it might be W's fault that they have a problem

("Because she sees what's happening" (turn 205)). Kelly did not stop talking to H, so W

must have been doing something wrong if she refused to speak with her. The moves that

H and W make are typical for the dialogue activity of having an argument. W makes an

attempt to terminate this unproductive dialogue activity by making a statement that she

does not want to participate in it and by shifting the focus of the interaction from

relationship problems back to the interests of the daughter. Her move, however, did not

result in bringing the end to having an argument, and later on M had to intervene to stop

it. Thus, participants themselves signal recognition of the inappropriateness of the

dialogue activity and initiate its termination even though their attempt may fail as they do

not have authority to do that. In contrast to excerpt 33:130, where M was trying to

terminate a dialogue activity at the early stage of its development, in the episode above M

does not mind the disputants building their argument as the having-an-argument features

are not as pronounced in the previous example and the facts they bring might be helpful

for future plans. This example illustrates that forms of dialogue activity are emergent and

what is going on is not always obvious. Indeed, it may have gone in a different direction

but it turned into having an argument. As this dialogue activity progresses, M intervenes

to make shift by referring to what was mentioned earlier in the interaction (i.e., W's

mentioning of acting in the interest of the child). At the same time, it is not simply the primitive argument that is problematic here but the fact that the disputants are treating their turns as though they are cross-examining a case in front of a judge. The disputants interchangeably assume the role of an interrogator and question each other about the past events in the way that depict the other party unfavorably while showing themselves in a positive light. Their moves do not treat the mediator as a mediator. Their contributions construct the debate and treat the mediator as the judge. The mediator cuts this dialogue activity off to initiate a different kind of dialogue activity.

Untimely off-task activities. During a session, there are cases when the participants initiate an activity that is appropriate for mediation but the mediator intervenes to terminate it as it happens at the wrong stage of interaction, which can be illustrated by excerpt 12:11. The episode takes place at the beginning of the session. The mediator goes over the agreement that has been reached previously. The (ex)-wife initiates a shift to the discussion of the proposal. The mediator intervenes not to let this shift happen.

Excerpt 12:11

11M: Well, ((PAUSE)) we've reached agreement on ((PAUSE)) the Wednesdays

12W: Okay

13M: Alternate weekends, and Easter, and ah=

14W: =((SIGHS)) On Easters I want to talk to him [(   ) [Um

15M: [Wait wait a [moment, okay=

16W: =I'm sorry

17M: Ahm, and ah, mister Craig has ah made, had taken the ((PAUSE)) the judge

has made the order for us to go to go to (   ).=

18W: =(   )

19M: Now, did mister Cloud explain to you how how to go about set up the appeal of

the of the first (   )?

((11 turns omitted))

31M: Now, the two issues are these. From the standpoint of Jen, ((PAUSE)) she

would like to ((PAUSE)) have them Easter Sunday. Easter [Sunday]

32H: [morning]

33M: =morning instead of the afternoon, and from Rich's point of view, he says that

ah, in the event he has to be out of town, and the event he can't be here to have

the children on a particular Wednesday, or a particular week is it just

Wednesdays Rich? Or a weekend

At the beginning of the session, the focus of the interaction was on the details of

the reached agreement such as visitation on one of the weekdays, at weekends, and Easter

(turns 11-13). W does not let M finish his turn. In turn 14, W mentions that she would

like to discuss Easter with H. Although topically her turn was connected to M's turn as

both of them have reference to Easter, W's sigh at the beginning of her turn and

expressing directly her wish to talk about the holiday signal that W has issues with this

arrangement and was making a shift to launch a discussion over it. M asks W to stop

what she was doing (turn 15) and starts his turn in turn 17 with the conjunction *and*

signaling the connection of this turn to his turn prior to W's interruption in turn 14.

In this episode, the mediator was updating the disputants on the current state of

affairs, which is part of the maintenance work for the discussion. The wife was initiating

a shift to discussing a proposal. M's moves in turns 15 and 17 show that this shift is considered inappropriate as the current activity is still under development. W's apology in turn 16 is evidence that she recognizes herself the inappropriateness of the shift. However, in turn 31 M comes back to the matter that W raised in turn 14 and opens the discussion over the visitation issues on Easter shifting to the dialogue activity of negotiation. Thus, the activity that W tried to initiate was off-task as it was ill-timed rather than inappropriate for a mediation session.

Excerpt 12:864 is another example of untimely off-task activity. In contrast with excerpt 12:11, the mediator's intervention is not a direct statement that the disputant has gone off track. In the preceding talk, the interactants were negotiating about the visitation time, switching weekends in particular. In the following episode, the mediator checks with the disputants if they have reached an agreement on that issue. The husband initiates a different dialogue activity, that is, asking for clarification. The mediator does not engage in this activity and continues his line of talk.

Excerpt 12:684

684M: Well did you agree to, to swit[ch weekends]

685W: [to switch   ] weekends

686H: I'm gonna ask a question, I mean this, I'm [not trying to give you a hard]

687W: [can we just switch weekends] so I

        don't lose a weekend

688H: Nobody's losing a weekend. I am trying to understand this proposal for

        compensation time I <u>still</u> don't understand=

689M: =(Let's see) well, I think we're- we're- we're

[(running) (   ), (   )] ( ) Did you=

690W: [We're getting, there,   ( )]

691M: =agree to, to switch, a weekend [(   )

692W: [Since you're going to have the seventh

       eighth ninth and tenth, okay, may I have them the second and_third_

693H: That was the agreement <u>Jen</u> [come on   ]

694W: [Okay that's what]   I said, that's what [I]

In turn 684, M inquires if the disputants agreed to switch the weekends. In turns 685 and 687, W makes a request to just switch weekends so the new arrangement would not result in losing some time with her children. In turn 686, H points out that he would like to ask a question and in turn 688 he states that he needs the clarification of the proposal for compensation time. It is not clear what M's move was at the beginning of turn 689 ("we're running ( )" might be a warning that they are running out of time) but then M repeats the initial question about switching weekends (turns 689 and 691). In turns 692-694, W and H engage in this line of the discussion. W asks if she can have the children on a certain days (turn 692). H's response was that was exactly the arrangement (turn 693). W points out that that was what she was saying (turn 694).

At the beginning of the episode, the participants engage in the dialogue activity of negotiation. The mediator checks if the disputants have reached the agreement. The wife shows her engagement in the current dialogue activity by providing a relevant response. The husband, however, initiates a new dialogue activity, that is, asking for clarification. However, the mediator does not get involved into this dialogue activity. He treats it as off-task in an indirect manner by not providing clarification to the husband's question.

The mediator refocuses the disputants' attention on the preceding dialogue activity by repeating his initial question. Asking for clarification is usually an appropriate dialogue activity for mediation sessions as it is important for the disputants to understand the nuances of the proposal, for example, to make a proper decision. Thus, in this particular situation, the mediator's non-engagement in this dialogue activity can be a sign that the mediator treats it as an untimely off-task dialogue activity.

To sum up, there are two types of dialogue activities that are treated as irrelevant. The first type (i.e., having an argument) is improper for the mediation session per se. Although it is the mediator who usually intervenes to stop the activity, participants also treat having an argument as the violation. The second type is dialogue activities that are appropriate for this institutional talk but ill-timed. In this case, it is the mediator who points out the inappropriateness and brings the interactants back on track.

Next, I will discuss how these findings advance our understanding of mediation activity.

<div align="center">*Discussion*</div>

Argumentation in the Mediation Context

The empirical findings described in this chapter reveal that the mediation activity is accomplished through various dialogue activities, such as information gathering, negotiation, asking for clarification among others. These findings stand in contrast with some developments in contemporary argumentation theory. As it was mentioned in the introduction to this chapter, mediation is usually viewed as an idealized type of argumentative activity or dialogue. These models are developed for the purposes of performing an informal logic analysis of arguments in naturally occurring contexts. Their

contribution is in using pragmatic theory in reconstructing the propositional arguments evident in less than ideal forms of naturally occurring argument. A problem with these ideal models is that they treat mediation as a specific type of argumentative activity (i.e., negotiation) whereas dispute mediation is achieved through different dialogue activities in which propositional argument may or may not be embedded. This is more consistent with Jacobs and Jackson's (2006) approach to argumentation as disagreement management where propositional argument is understood to arise from within the dialogue activity and to function as a repair mechanism for that dialogue activity.

In line with work done by Jacobs and Jackson (Jackson, 1992; Jackson & Jacobs, 1980, 1981; Jacobs & Jackson, 1989, 1992) and Jacobs and Aakhus (2002a, 2002b) the present study draws the attention to the process of how reasoning between the participants is embedded in the activity. The actions used to perform a certain type of activity are related to the epistemic quality of that activity. Mutual performance of actions takes a trajectory that may not be expected. Participants may be reasonable on separate moves, but when these moves are put together they do not necessarily have this quality. Moves and countermoves give a shape to disagreement space that is always emergent. What is taken from this disagreement space to construct the next communicative move can be beyond what is expected by anyone in the interaction. Disputants may bring reasonable things to talk about (e.g., whether the other party can be trusted if he or she violated trust in the past) but sometimes this action takes into a different direction.

Mediation is an institutionalized type of discourse in the sense of disciplining the performance of participants. The argument plays a different role there than, for example, in the court, where the aim is to establish the truth and assign responsibilities. In court,

the participants bring in facts about the past to make an argument to support their claim. In the course of mediation session making an argument about the past is discouraged, which is related to the orientation of mediation sessions on the future. The disputants can make arguments but they should do this with the future focus for planning and negotiating the arrangements for their children. In this case the disputants are reasoning together to find a better solution for their problem. When the disputants engage in cross-examination similar to what happens in the court and a primitive argument, they are in a way reasoning against each other. What is reasonable for one type of activity (e.g., a court trial) is not acceptable in the other one (e.g., dispute mediation). Bringing in facts that depict the other party in a negative way, for example, is appropriate for trial but not for dispute mediation. Acting in adversarial roles is normal for the court, while the roles of collaborators are encouraged in dispute mediation.

Another point about an argument in the context of mediation is that although making-an-argument or having-an-argument in their prototypical form do occur, what commonly happens in dispute mediation is having an argument while making an argument. In some cases a having-an-argument part is more pronounced and easily recognized by the participants, and the mediator cuts this dialogue activity at the early stage. In other cases it is not that obvious and is terminated by the mediator when it starts aggravating.

The mediator's focal point is to try to construct a mediation activity, which involves acting strategically. The concept of strategic maneuvering is usually related to traditional argumentative moves, not the dialogue itself. The work that the mediator performs is to structure dialogue in such a way that people would be able to make

contributions to create the process of deliberation. The dialogue activities that the

mediator initiates and encourages are design moves of a higher level. Next section will

focus on the issues of designs for communication.

Mediation and Designs for Communication

According to Aakhus (2007), "Designs for communication present affordances

that provide possibilities for interaction and constraints that remove possibilities for

interaction" (p. 114). The present study contributes to understanding what are these

affordances and constraints for creating the process of deliberation in the format of

dispute mediation. The research taking a design stance usually focuses on the work of

practitioners in designing interactivity and does not pay a due attention to the other

parties' role in this process. The findings of this study provide answers to this question.

Disputants enter the mediation as they cannot resolve their dispute on their own.

They outsource responsibilities to the mediator. The mediator shapes an activity to

achieve certain ends. By designing the ways disputants make their contributions, the

mediator gives an epistemic quality of interaction. The mediator contributes to

constructing a specific form of interactivity by advancing certain dialogue activities (i.e.,

the ones that keep the participants focused on task, for example, information gathering)

and discouraging others (i.e., off-task activities such as having-an-argument or

institutionally appropriate dialogue activities that are ill-timed). Thus, the dialogue

activities serve as affordances and constraints for interaction.

Disputants' engaging in off-task activities can be, on the one hand, evidence of

difference in interactional goals (e.g., to verbally destroy the opponent) and a struggle

over what role is being played out, and thus, what kind of actions are acceptable. This

relates to how contributions participants make frame the other's role. It is through

dialogue activities that participants take up those different relations among the

participants become evident. That is, when disputants, for example, act as people who are

in conflict, they are likely to engage in having an argument and defining who is right and

wrong. When they treat their turns as debate, they treat the mediator as a judge.

On the other hand, these off-task dialogue activities can be evidence of what form

of interactivity disputants are constructing, whether it is the result of their assumptions

about dispute mediation or a response to emergent problems in the course of interaction.

As Aakhus (2007) points out, designs for communication differ depending on "what an

institution, practice, procedure, or technology presupposes about communication" (p.

114). Participants' engaging in proving who is right or wrong illustrates what kind of

interactivity they are constructing and reflects their view of the nature of the mediation

court per se. Participants come with certain expectations about what is going to happen

during the mediation session and a certain sense of argument and the way of interacting.

Although the mediator checks with the disputants how much they know about the

conciliation court and whether they understand the rules and procedures, and sets up the

scene of the discussion at the beginning of the session by providing the parties with the

information on what is the goal of the meeting and what the participants are expected to

do, at times they act as if they are in a real court. Their attacks at each other and

defensive moves are the actions that are typical for this institutional context. The fact that

the mediator has to stop the dialogue activity by pointing out that the disputants are not

on trial indicates that they are crafting the communication that is appropriate for a

different type of institution, that is, the court, rather than the conciliation court. So the

disputants may be engaging in crafting an interactivity that is different from the one that the mediator is designing, which can result in interactional tensions and clash over different designs for communication.

At the same time, what is on-task or off-task is negotiated and constructed in the course of interaction. The problem that mediators face as a designer of interaction is that they have to construct this interactivity on the fly. It is not always obvious what is happening in the interaction until it happens. Mediators can let the disputants build an argument as it may be relevant to the creating a plan but they intervene when the dialogue acquires the quality that has to be stopped.

How on-task/off-task modes are negotiated can also be illustrated by instances of untimely off-task dialogue activities. Although one of the disputants makes shift to an institutionally appropriate dialogue activity, the mediator terminates it as it happens in the middle of another dialogue activity. The participants negotiate a temporal off-task character of the dialogue activity and resume it later on in the course of the session.

The analysis of dialogue activities advances our knowledge of how participants create a specific type of interactivity. For the purposes of the study references, topics, and dialogue activities were examined separately to show how on-task and off-task modes are constructed at micro and macro levels. The important point is that these levels build on each other and are used together to shape the process of deliberation. Studying references, topics, and dialogue activities across the transcripts makes it possible to find out common features of what constitutes on-task and off-task modes of dispute mediation. Knowing what is on-task or off-task, however, is not enough for understanding how the interactivity is created. It is important to know how mediators

manage the interaction to keep disputants on-task. The next chapter will discuss

mediators' interventions they make to bring interaction back on track when disputants go

off-task.

CHAPTER 7

PRACTICE OF TOPIC AND DIALOGUE ACTIVITY MANAGEMENT

The main focus of chapters 4-6 was on what constitutes an on-task mode of

mediation session and what is considered to be off-task. Any meeting is a focused

encounter that leads to some ends. The question is how parties come to know whether

they are on-task or off-task. Chapters 4-6 have shown how references, topics, and

features of dialogue activities serve as resources to do that and as design material

mediators use in crafting a mediation session.

This chapter focuses specifically on the mediator practices to bring the interaction

back on track when the participants go off-task and sets up two research tasks to

accomplish. First, it examines the moves mediators make to perform interventions to

bring the current state of activity more in line with mediation activity. Second, it

accounts for the variety of interventions mediators perform by articulating some

principles for distinguishing types of interventions from each other using the concept of

face and facework from Brown and Levinson's politeness theory.

 Moves mediators make are consequential for the substance of the talk. What is of

interest here is how mediators' moves project content and participation roles and open

and close possibilities for the direction of the interaction.

For the analysis in the present chapter, I specifically look at moves mediators

make to terminate an off-task topic or an off-task dialogue activity and the local context

of their occurrence. The analysis is based on the interventions from all the transcripts.

The interventions were examined in terms of the target of the termination (i.e., a topic or

a dialogue activity), the form, and the account for terminating a topic or a dialogue

activity. These interventions range from directly pointing out off-task topics and dialogue activities to dealing with the situation in a more subtle way. The interventions are put into several categories. First, I describe interventions that are more direct in their nature. Next, I analyze the mediators' off-record moves in case of a shift in activity. The empirical findings provide grounds for theorizing about the nature of mediation talk as a type of institutional interaction and argumentation theory. From this analysis, I make two specific claims.

First, I suggest that the participants, especially the mediator, face the puzzle of trying to produce institutional talk within the fact of the interaction order and that mediators' interventions are tailored to sustain the interaction order and the institutional order. In the course of mediation sessions, the interaction order and the institutional order are co-occurring. Competing demands of the interaction order and the institutional order present an interactional dilemma for mediators. Mediators construct their interventions in the way that would keep the disputants in the frame of the mediation activity and would not threaten their face at the same time.

Second, I argue that the participants co-design the interactivity. The mediator uses the local resources, that is, what the parties make available in the course of the interaction, to shape the discussion. In terms of argumentation theory, mediators' interventions are regarded from the point view of strategic maneuvering. The way mediators construct their interventions to signal topical violations in order to meet audience (i. e., the disputing parties) demands specifically reflect the presentational devices level of strategic maneuvering. As in the case of disagreement space, strategic

maneuvering is limited by the interactional and institutional constraints of the mediation session.

Face and Facework

The concept of face was introduced by Erving Goffman (1967), who defines face as "the positive social value a person effectively claims for himself [or herself] by the line others assume he [or she] has taken during a particular contact" (p. 5). According to Goffman, face is social and public as it is an image that is revealed in the people' actions in the course of interaction. Another aspect of face is that it is situated, that is, it is associated with a particular identity (e.g., friend, client, mediator, parent) we present in a particular interaction. Face is claimed when interactants enact different roles and when other participants act toward them in the way that sustain that image. As face is social, public, claimed, and situated, the maintenance of face involves cooperation of all the participants of the interaction.

However, people can perform actions that threaten face. Actions can threaten positive face (i.e., the person's wants to have his or her public image to be approved and ratified) and/or negative face (i.e., the person's wants to be free of impositions). These two kinds of face (negative and positive) are important aspects of Brown and Levinson's politeness theory (Brown, 1990; Brown & Levinson, 1987). According to Brown and Levinson, the concept of face plays important part in selecting verbal strategies of politeness. The researchers distinguish five types of face threatening acts (FTA). Interactants can commit a FTA on record by saying it in a straightforward manner; on record with positive redressive actions (positive politeness); on record with negative redressive actions (negative politeness); off record by communicating intentions in an

ambiguous way that allows to avoid accountability; and, finally, not to do a FTA. The acts form a continuum from most face threatening (bald on record) to less face threatening (not committing a FTA). Brown and Levinson claim that the selection of the strategies is determined by power relationship between the participants, solidarity or commonality, and face. The bigger the vertical and horizontal distances between the interactants and the bigger risk of imposing on a person or undermining her or his image, the less face-threatening act is committed.

The concept of face is a crucial feature of the organization of interaction as the need of a presentational self to be achieved and maintained puts constraints on interaction (Goffman, 1983). The interactants have obligations to sustain their own face and the face of other participants in the course of interaction, which lets the participants get where they are heading in their interaction.

Goffman's and Brown and Levinson's focus on face was how it happens in the ordinary interaction. What is interesting in the present study is how this concept plays in the institutional context. During the mediation sessions that comprise this corpus, the participants are gathered for the purpose of working out visitation and custody issues that arise from their divorce. The mediator's task is to get the participants to contribute to solving the visitation and custody issues before them. Mediators are to help people deal with their conflict, which can be face threatening. The mediator's actions can violate negative or positive face of the participants. For example, letting one party to tell a story would be threatening for the other one as it depicts this person unfavorably. Another issue is that mediators' task is to lead the participants but, at the same time, they are not supposed to be authoritative. This can be summarized as a practical puzzle mediators

contend with in performing their role as non-authoritative intervention (e.g., Jacobs, 2002; Aakhus, 2001; 2003).

The following sections describe different types of interventions mediators perform. The final section discusses the findings in relation to the interaction order and the institutional order, communication design, and argumentation theory.

Types of Interventions

In the opening speech, the mediator introduces the nature of the mediation activity and makes moves to keep the participants focused on it throughout the session. However, the disputants can take interaction in a different direction. When the participants drift away from the institutionally defined task, mediators construct their interventions in a number of ways to signal that the participants went off-task in the course of the session. The following sections describe different types of interventions mediators perform to help parties address their issues and how those moves contribute to producing institutionally relevant talk and interaction. I discuss specific maneuvers they make to keep the institutionally preferred interactional frame going.

The interventions vary in forms but they can be put into two major categories, namely, on-record and off-record interventions, depending on whether the interventions include a straightforward message to terminate an off-task topic or dialogue activity or not. These two categories have their own subcategories. First, I will describe on-record interventions.

On-Record Interventions

On-record interventions are mediators' contributions where they specifically point out matters participants should not talk about or a dialogue activity that the disputants

should not engage in. The interventions fall in the following categories: *mediator-centered interventions*, *parties-centered interventions*, *session-centered interventions*, and *non-centered interventions*. The interventions differ in terms of types of accounts the mediator provides to terminate an off-task topic or dialogue activity or lack of them and the degree of threat they present for the parties' face. I will describe these types in a greater detail and illustrate with examples from mediation sessions.

   Mediator-centered interventions. Mediator-centered interventions are the ones where the reason for not discussing a certain issue or not engaging in a dialogue activity involves the mediator. In other words, the mediator is held accountable for terminating a topic or a dialogue activity. It can be attributed to 1) the mediator's unwillingness to do that or 2) the mediator's incompetence in a specific area. Excerpts 62:254, 9:17, and 33:157 illustrate the former, while excerpts 59:520 and 50:94 are examples of the latter.

   In excerpt 62:254, the (ex)-husband initiates the topic on the past event that depicts his (ex)-wife in a negative way, and the mediator intervenes to close up the topic indicating lack of need to know certain things.

Excerpt 62:254

254H: [that's why I'd just ask her] for a change of days okay? Uh just before uh just before uh this this this been about a few weeks ago uh she had to uh go to work early on I forgot on day she had to go to work (and then I had them) so we alternated I took she took my Tuesday and I was to take her Wednesday and Wednesday night she comes driving over to the house saying I'm gonna have to take the kids she calls her lawyer telling him that I'm keeping them from their appointments and keeping them from their medication, she had poured the

medication down the drain [the night okay I   ]

255M: [Okay I (don't need] to hear that)

Here, H starts talking about what happened in the past. He tells M that H and W

had an agreement that the children would stay with H for two days. However, W changed

her mind and came over H's place to pick up the children. H points out that W accused

him of keeping the kids "from their appointments and keeping them away from their

medication" while she was the one who had gotten rid of the medication. This episode

shows W in an unfavorable light, and M does not let H finish, saying that he does not

need to know all these details ("Okay I (don't need] to hear that)".

In excerpt 9:6, which was discussed in detail in the previous chapter, the

mediator's intervention is constructed as his lack of interest in certain subjects.

Excerpt 9:6

6 W: [Well,   ] Well anyhow Oscar's rather hesitant of Jack, he's a little afraid of

         him, and I'll have to bring up the past be- because of the past and um=

7 M: =Yeah by the way let me just say, there are some things about about the past

         that are important to understanding, uh further than that I'm not interested. It's

         not a matter of who's right or wrong or good or bad or moral or immoral or any

         of those things, I don't care.

Like the previous excerpt, this example illustrates the inappropriateness of the

topic *party's negative behavior*. Here, constructing his intervention, M puts emphasis on

his role in making a decision about what is proper or improper to discuss. M is "not

interested" and does not "care" about the past (e.g., events that depict one of the

disputants in an unfavorable light) unless it is important for understanding the situation.

The following example (excerpt 33:157[3]) illustrates how the mediator uses this type of intervention to terminate an inappropriate dialogue activity.

Excerpt 33:157

157H: [What do you want]

158W: You disgust me=

159M: =Okay

160W: You are a disgusting person Brent

161M: [Lucille   ]

162W: [You will] lie ah ((WHISPERED)) God=

          [You're gonna get yours in the end (   ) you watch] it.

163M: [Excuse me,   Lucille   excuse me please.   ] Okay w- we're not

          trying the case, I don't wanna hear any more arguments. All I wanna do now is

          see if there's anyway you two can agree to some sort of temporary plan

          because if you don't, then the court can help you with that.

In turns 157-162, the disputants engage in having an argument, exchanging attacks at each other. In turn 163, M intervenes to terminate this activity. M constructs this intervention by contrasting what M wants to do and what s/he does not. M expresses his or her unwillingness to hear their arguments ("I don't wanna hear any more arguments") and desire to assist in creating a plan ("All I wanna do now is see if there's anyway you two can agree to some sort of temporary plan …").

Using this type of intervention, the mediator acts as an authority and expresses interactional power to terminate the development of on-task activity or topic. The

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[3] An extended version of this excerpt was analyzed in the previous chapter.

mediator does not control the outcome of the proceedings like a judge would but the disputants do. The mediator, however, can exercise control over the process. The mediator shows that s/he is the one who decides what is proper and what is not to do in the course of the session. The interventions of this type are face-threatening acts in a great degree as they do not tone down the face threat and do not compensate for that. They threaten the positive face of the disputants as they show no concern for their wants (e.g., to talk about certain events). They are also threats to their negative face as they impose on them (e.g., when the mediator states what he/she wants the participants to do). In the context of mediation activity, these face-threatening acts are less offensive than in ordinary interaction due to the power factor. Although mediators do not have formal power as a judge, they have a formal role and exercise more interactional power due to their participation role in the interaction.

In contrast with this type, the second one does not carry this authoritative character. Here, to stop the development of the topic, the mediator brings in into the conversation lack of his/her knowledge to discuss certain things or abilities to take actions regarding them. For example, in excerpts 59:520 discussed in Chapter 5, the mediator expresses his uncertainty about how far they can go into the topic of physical abuse as the mediator does not "have to make any decisions about it with anybody who knows what they're talking about on that subject (topic) at least". In a similar vein, in excerpt 50:94, the mediator points out his lack of ability to do anything in terms of financial issues.

Excerpt 50:94

94M: When's the when's the next, return date to court?

95H: Monday

96M: (   ) right?

97W: Yes

98H: This is our fifth time in court, so ((PAUSE)) (   ) community property,

there won't be any left (to), pay the attorneys and cour[t costs (   )

99W: [But I made them

compulsive two months ago they have not said yes-no counter offered or even

spit in my face. So I do not believe that it is my fault that this thing has to keep

going back to court=

100H: =Her, basically her proposal ((PAUSE)) which for some reason she can't [can't]

101M: [Well,]

you know I don't really need to get in, into the financial proposals 'cause I, not,

nothing I can do about that anyway you know and

In the excerpt above, H brings in into the discussion expenses that going to court

involves and the consequences of the court process on the parties' financial situation (turn

98). In her turn, W's makes a point that it is not her fault that they have to go to court

again as she made a proposal but has gotten no response to it. In turn 99, H starts delving

into W's proposal but M interrupts him and points out that they should not discuss this

issue, as he cannot do anything in terms of financial matters.

Employing this kind of intervention, the mediator avoids a responsibility to deal

with certain issues. As the mediator cannot help the disputants solve these issues due to

his or her incompetence or lack of knowledge, discussing them is pointless. In this way,

the mediator terminates the discussion in a less threatening manner. They mitigate the

threat to the participants' positive face by making themselves vulnerable as revealing

themselves as lacking knowledge in certain areas or having no power to deal with certain issues present a threat to their own positive face.

It appears that the shape interventions take has to do with the type of off-task topics the disputants initiate. While the mediator cannot claim incompetence in dealing with certain past events, bringing in financial issues or physical abuse allows mediators to terminate the discussion on the grounds of their inability to deal with the issues.

Parties-centered interventions. Parties-centered interventions are the mediator's moves where the account for the termination of the discussion has something to do with the disputants. In this category, 1) the reason for not discussing a certain issue can be attributed to circumstances in the parties' situation or 2) the choice of how the discussion will develop is given to the parties.

The first type of this intervention is illustrated by excerpt NR3:74. In the following example, the grounds for terminating the discussion over the financial matters are the parties' unstable situation. The (ex)-wife states that her (ex)-husband is not taking part in payments for the house and she has to sell the house. The mediator intervenes to stop the development of the discussion.

Excerpt NR3:74

74W: OK and I have to sell the house because, um, since my husband moved out he
                hasn't paid any of the payments=

75H: [=Right, right   ]

76W: [We got, we got] the house ok he's paid [one payment and half another payment]

77M: [OK Wait wait wait   ]

let's not talk about the house and let's not talk about money right now because I

know that you're in the early stages of your divorce and your residences may

change because of financial situations and everything

78W: ((cough cough))

79M: but let's talk about the children being with you and living with him wh what do

you propose in terms of the children's time with each of the two parents

In turns 74 and 76, W focuses on financial problems, which M points out as

improper in turn 77. M directly asks the participants not to talk about money and

residence as their situation can change. In turn 79, M suggests discussing the children's

living with the disputants and invites the parties to share their proposals concerning this

problem. In this way, M makes a move to refocus the discussion on the custody issues,

which is an institutionally appropriate topic, and to leave aside the financial issues that

cannot be resolved during the mediation session. Bringing in into interaction the

temporality of the disputants' situation and conditions makes the discussion over these

issues fruitless. There is no point trying to make a decision in regard to matters that are

going to change. In this way, the mediator makes a move to terminate the development of

the off-task discussion in a non-threatening manner as the reason is attributed to

circumstances that are out of control of the participants. The way the intervention is

constructed which aggregates the mediator into the collectivity ("let's not talk about the

house") decreases the social distance between the mediator and the disputants, which also

contributes to decreasing the threat to the disputants' face.

The other type of the parties-centered intervention is exemplified by excerpt 200:46. This is an example of terminating the topic by constructing an intervention in the way that the parties are supposed to make a decision about what should be discussed.

Excerpt R200:46

46W: I didn't trust him to have him take Andrew this story is not right, I did not tell him leave, I was over the bar he lived on the top of a bar around the corner from me and the, bartender with the barten[der t]here and his girlfriend=

47M: [Ho   ]

48W: =w[as]

49M: [ho-] hold on a minute she doesn't interrupt you and you you know you you do interrupt her why not, excuse me a minute ((M answers buzzer)) This machine should (   ) Look ((PAUSE)) We can continue to feel very justified, in what each of us are doing. ((PAUSE)) We ca, carry on these positions and what listen, what will happen, you know it. It will be that you will continue this fight, and even the judge's, signature on, on orders is not necessarily gonna change that. Somehow, you have to understand, you are jeopardizing your child's ((PAUSE)) mental and maybe physical health ((PAUSE)) Now, somewhere along the line, it's important that you say, this is going to stop I will be listen and I will begin to work with the other, parent. ((PAUSE)) You will find, that if you do not your kid will have all kinds of problems. And I will guarantee you

50H: (   )

51M: Okay then what do we do? Mom do you want to stay, with the position you have

saying this is I did because of thus and so, do we keep on talking about what happened in the past ((PAUSE)) all the rotten yesterdays you've had which everybody understands, or do we start talking about, the possible good tomorrows that there may be.

52H: That's why I came from San Diego to here

53M: Ok well let's, let's continue it let's think about those things instead of, instead of talking about who did what when, let's think about what you can have in the future. Because that's important to give [this child] ((PAUSE)) Now ((PAUSE)) uh=

54W: [Mhm]

In this example, W expressed disagreement with H's interpretation of the past event   and attempted to give her vision of it (turn 46). M interfered to address H's behavior at the moment as he was interrupting W all the time (turn 49). Then, M pointed out that H and W's behavior had negative consequences for the well-being of their child and had to stop (turn 49). Later, in turn 51, M poses a question to H and W whether they would like to continue talking about "all the rotten yesterdays" or start talking about "the possible good tomorrows". By contrasting the past and the future and drawing a negative image of the former and a positive one of the latter, M shows that talking about what happened is not productive and improper if the parties would like to work out some solution. In turn 53, M is more direct about what the discussion should be and invites the parties not to delve into the past but look into the future. In this case, M does not say in a straight manner that the past events are topics off-task but makes his point through creating contrasting images of the past and the future events. In the way M constructs the

intervention in turn 51, s/he gives an idea to the disputants what they should talk about; however, the decision to make is left to the parties. Thus, using this type of intervention the mediator shifts the responsibility for decision-making to the disputants, which makes them more active in the process of deliberation and more responsible for its outcome. As in excerpt NR3:74, the mediator positions himself/herself as part of the collectivity to increase commonality, which makes what sounds as criticism less threatening for the positive face of the disputants.

Session-centered interventions. Session-centered interventions are the ones where the reason for not discussing a certain issue is attributed to the fact that the matter is out of scope of questions that can be resolved during the mediation session or the dialogue activity is inappropriate for the mediation session.

Excerpts 60:387 and 34:181 discussed in a greater detail in chapter 5 can serve as illustrations of this category in regard to off-task topics. In excerpt 60:387, the mediator closed the discussion by pointing out that the parties were talking about the court process that had nothing to do with the mediation session and supposed that the question could be addressed by the parties' attorneys. In a similar vein, in excerpt 34:181, the mediator pointed out that financial matters could be resolved by the attorneys or the judge but not during the session. Similar to the instances of the mediator-centered interventions where the account for the termination of the off-task topic was the mediator's incompetence or lack of knowledge in certain areas, the types of topic the disputants initiate enables the mediators to shape their interventions in a less threatening way. The termination of the topic on the basis of impossibility to resolve it during the session decreases a threat to the

positive face of the disputants as it invokes institutional constraints (and the power factor) rather than the mediator's personal unwillingness to deal with these issues.

Excerpt NR3:204 illustrates the usage of this intervention to terminate an improper dialogue activity. One type of moves the mediator makes to reinforce the institutionally appropriate interactional frame is signaling in a direct manner that shifts in interaction happened. In this case, mediators would point out that the activity the parties engage in is inappropriate and should be stopped. In excerpt NR3:204, the disputants are having an argument. M interferes in a number of turns to stop its development.

Excerpt NR3:204

204H: [I've listened to all her phone calls, and all her phone calls are hi where' the

         kids how're they doing today well ah let me tell you about my boyfriend Alex

         well I just   took twelve hundred dollars worth of cocaine, uh I had

         [anal sex with Alex I did this=

205W: [Nick, you can lie all you want=

206H: =oh I'm not lying   ]

207W: =you (   ) [this woman] doesn't care.   Think of some=

208M: [Ok   ok

209W: =more things Nick I was a prostitute I [murder people   ]

210H: [Well, I wouldn't doubt it]   the way

         [you

211M: [okay

212H: [=carry on

213W: [go ahead [say anything you want]

214M: [let's just   let's just] stop for [a moment I have a suggestion for

215W: [you know, it doesn't

216M: the two= of you   ]

217W: embarrass=me a bit] you can yell at it to the world

218M: OK. Let's just stop for a moment and and let's see what might [   ] be a

219W: [Hmm]

220M: solution to=all of this 'cause this isn't going to help you to keep going back

         and forth like this. ((PAUSE)) Um, would you consider this possibility since

         you're each very apart in what you want, um, it would seem that, if you're

         going to go to court probably the judge is going to need some information to

         base a decision on [other] than your slinging mud [against] each=

In this excerpt, H accuses W of inappropriate behavior such as giving him phone calls to say that she was taking drugs and having anal sex with her boyfriend (turn 204). W confronts these accusations and claims that he is lying (turn 205), which H denies (turn 206). Further on, W brings in some other examples of negative, and even criminal, behaviors (i.e., being a prostitute and a murderer) and points out that H can accuse her of committing them as well (turn 209). By putting these imaginary misdeeds in the same line with H's accusations, she makes it clear that his allegations are groundless. H, in his turn, supposes that W is capable of doing all these things (turns 210 and 212).

The disputants take the interaction away from the frame the organization of mediation calls for, which is collaborating on creating arrangements for the children. The mediator does not engage in the on-going activity. The mediator tries to intervene in turns 208 and 211 (the marker "okay"), explicitly requests to bring the current activity to the

end in turns 214 and 218, and later, in turn 220, describes the disputants' actions as "going back and forth" (i.e., attacking) and the activity they engage in as "slinging mud at each other" (i.e., quarrelling). The language that the mediator uses to describe the participants' activity ("going back and forth" and "slinging mud") and the way he opposes their actions to what is required ("slinging mud" versus providing information) evoke a negative image of what the disputants are doing. "Going back and forth" means that the participants are not making any progress; "slinging mud at each other" has a negative connotation as it is not something that people normally do. Making someone dirty is a misdeed, and getting dirty is something that people usually avoid. The mediator also directly points out that doing that was not going to help the parties to solve their issues. Besides, the mediator suggests an alternative way to deal with the issues the disputants brought in, namely, going to court and providing the court with sufficient evidence. In this way, the mediator directly indicates that the activity was unproductive and inappropriate in the given circumstances.

The mediator makes a number of interventions but the one that is of special interest here is "OK. Let's just stop for a moment and and let's see what might [   ] be a solution to all of this 'cause this isn't going to help you to keep going back and forth like this" (turn 218 and beginning of turn 220). In this intervention, the grounds for the termination of the dialogue activity is the fact that what the disputants are doing is not helping to deal with what they are supposed to do in the course of the session. The face-threatening act is mitigated here by the aggregation of the mediator into the collectivity ("let's just stop for a moment and and let's see") and invoking the goal of the interaction.

Session-oriented interventions are the ones that are in a greater degree task-related as they explain the inappropriateness of a topic or a dialogue activity in terms of an obstacle to achieving an institutionally defined goal of the encounter.

Non-centered interventions. The interventions of this type point out the violation of topic or dialogue activity appropriateness without providing any explanation why it is considered improper.

In excerpt 31:83, the participants discuss what should be done in case the child gets sick. The discussion has gradually shifted to having an argument, and the mediator intervenes to bring the interaction back on track by calling the parties to stop the dialogue activity.

Excerpt 31:83

83M: Listen I don't know if Ron want playtime. You know one of the real tough areas is is what happens when Angela is sick. It's your feeling that she she should be at home with you.

84W: I feel if she gets sick at my house yeah. That I shouldn't have to send her over there sick.

85M: Suppose that he that she got sick at Ron's house?

86W: If it's you know sick and he can take care of it fine, but like sick when she was that two weeks ago when he had to take her to the hospital. I I'm I can't tell you how angry I am over that situation. And I feel that she should be at home if she's that sick. You know what does a child know? She's a she's afraid to say to him you know I want my mother. I know that because I've talked with her about it she doesn't wanna say anything to upset him about me or me about him.

87M: That's really sad you know?=

88W: =I know it's [sad]

89M: [That] a child would be afraid to tell the parent she wants mother

        when she's with you or when she's with you that she wants to be with daddy=

90W: I know it is very sad. You know she came home and the next day after she'd

        been to the hospital and I broke down and told her how upset I was that I wasn't

        here and she goes oh it's okay mommy and then we started talking about it a

        little bit and she goes well I really did want you there but but daddy would've

        been angry [(   )]

91H: [You don't] think she was responding to your feelings though?

        Because she said that=

92W: =Oh and when two days later you came and picked her up and I said in front of

        her that I want that she wanted me at the hospital and she looks up at him with

        the big brown eyes and goes You won't forget that will you daddy? I said to him

        if she has to go to   [the hospital   ]

93H: [because she say how upset] you we[re, Ana]

94W: [How] upset,

        okay

95H: [She was] re- responding to you to (placate) you

96W: [I don't]

97W: I don't wanna talk

98H: [That idea   ] didn't come from you, you sat down=

99W: [(ask her, okay)]

100H: =and said and told her how upset you were. You put that idea in her head how you how upset you were that you weren't with her she wanted to please you so she came back and said yes I want I wanted you there, that idea didn't come from her she didn't ask for you once, she was fine with me ((PAUSE)) Okay and the reason I [didn't   ]

101W: [(   )]

102H: I didn'[t   ]

103W: [I don't] believe you=

104H: =and the reas[on   ]

105W: [I don't] believe a word you say

106M: Okay, let's stop that

W's position in regard to the situation when the child gets sick is that if this happens while the daughter, Angela, is with her, she should stay at home even if it is H's visitation time (turn 84). If this happens while Angela is with her father and he can take care of it, she can stay with him (turn 86). However, if something serious happens, Angela should be with W (turn 86). W refers to the recent event when Angela got sick and had to be taken to hospital and she was not notified about that. She mentions that she is still feeling angry over the situation, especially because she believes that the child wanted W to be with her but was afraid to ask her father about that (turn 86). W brings in the fact that the child does not want to say anything about either of her parents to the other one as that may make them upset. M makes a negative assessment of this kind of situation (turns 87 and 89). W keeps talking about that particular situation, which depicts H in an unfavorable light (turn 90). H opposes W, making a point that the child might

have been reacting to W's feelings (turn 91). Further on, H and W exchange a number of remarks that justify one's position while questioning the position of the other parent. W refers to Angela's behavior as evidence of her fear of H (turn 92). H insists that what the child said was provoked by W's mood but did not reflect the reality (turns 93 and 95). According to H, the child was fine with him and did not ask for her mother to come (turn 100). W refuses to talk about the situation (turns 96 and 97). She expresses her disbelief in what H says (turn 103). M makes it clear that the participants were involved in an inappropriate activity. In turn 106, he asks the participants in a straightforward manner to stop what they were doing (the termination marker "Okay" and the directive "let's stop that").

In this case, M does not name this activity, that is, having an argument, directly and performs the intervention without redressive actions. Bald on record interventions maximize the efficiency of the action but do not minimize the face threat (Brown & Levinson, 1987). In this episode, the mediator intervenes to terminate the dialogue activity in a mitigated form by framing the directive to stop as a mutual action ("let's stop"), thus decreasing the face threat.

Excerpt 31:138 is an example of how the mediator makes an attempt to bring an end to the parties' having-an-argument by diminishing the subject matter of the argument. Prior to this episode, the (ex)-wife has brought in the situation when her (ex)-husband was supposed to have their child for the weekend according to the visitation schedule and informed her last minute that he would not be able to do that, thus ruining her plans for that weekend. She asked the mediator to give advice what to do in such a case. The mediator's recommendation is that the (ex)-husband should give a courtesy call to her to

check if she would like to have their child that weekend and arrange child care if she had

other plans. The mediator asks the parties if this solution would be acceptable to them

(turn 138). First, the (ex)-wife accepts this arrangement (turn 139). However, later in her

turn she shifts her focus from the solution on the past event again and expresses her

dissatisfaction with how her (ex)-husband acted, depicting him as an irresponsible person

who does not care about her plans. In turns 140- 148, the disputants exchange attacks and

defensive moves related to each other's behavior in that particular situation. In turn 149,

the (ex)-husband brings in a deeper problem, namely, trust issues. The (ex)-wife, in her

turn, accuses him of not trusting her and refers to the details of their property settlement

agreement (turn 150). In turns 150-155 and 157-159, they have an argument about minor

property issues. The mediator intervenes in turns 156 and 160 to stop the argument by

expressing his disbelief that they can have an argument over such things. However, the

disputants continue accusing each other, brining in financial issues (turns 161-163). The

mediator intervenes again, pointing out that they have to work at some problems in a

different way, and brings the interaction back on track by shifting the focus to what the

parties would like to do next.

Excerpt 31:138

138M: [Okay] Okay so ordinarily after having been giving Ana a chance to to do that.
         Uhm, most people feel that it's the responsibility of the parent that is to have
         had the child that weekend to take care of the child. Is that how you'd like to
         do that from now on?

139W: That's fine with me and I am normally not like even the one day a week I
         could see (dumping that one day and doing something different). My schedule

is fairly flexible you know with some notice. This particular thing I I just felt

really put out because he was coming on you know I can't take her this

weekend so I want another weekend and I you know my plans were not

important what about me? You know of course if it came down to that he's

gonna go on not taking her I guess I got her, she's my daughter I mean what

am I gonna do I just feel that you know there's some responsibility involved in

this thing=

140H: =I didn't give you an ultimatum like yo[u're making i]t sound. I asked

141W: [not ultimatum]

142H: =i[f we cou]ld switch weekends

143W: [Okay but]

144H: =okay you didn't even [give me an answer]

145W: [you did it because]

146H: =You didn't give me an answer you just said I I'll think about it I'll think about

         it you didn't even give me an answer if you had given me an answer I would

         have known what I what I could do or what I couldn't do, okay?

         [But I tried (I just wanna make that clear)]

147W: [I guess I didn't okay first of all   ] I knew this was coming up and I

         guess I didn't believe that if I said to you so you have her this weekend and

         that's your weekend that that would be the end of it

148   ((PAUSE))

149H: You know I've always maintained that of we could talk we could work things

         out you know, we can't talk so (we can't go) through with this, you don't trust

me you don't believe a word I say so we can't talk=

150W: =How much do you trust me? You had to put into the property settlement

agreement that I shouldn't take the microwave oven that's built into the wall,

the dishwasher that's built in

151H: (   )

152W: You put that in that I shouldn't take that out of the house, trust?

153H: You took the little spigot to turn the uh sprinklers on

154   ((LAUGHS IN THE BACKGROUND))

155W: I got it

156M: You guys arguing about that?

157H: You took the fireplace screen. = (LAUGHS)

158W: =Same reason

159H: I can't believe [you took] the fireplace screen.

160M: [Come on]

161W: Ron we feel that you totally screwed us =

162H: =Fine, you feel like I totally screwed you you had a you had a you had a top

lawyer and I had a top lawyer and I had a top lawyer and I totally screwed

you=

163W: That's right =

164H: Okay, how much did we spend? Twenty thousand dollars on attorneys fees,

between the two of us (And that's just before it started)

165M: Okay at some point now you you've gotta work some things out in a different

way perhaps. What do you wanna do at this point? Uhm think about this and

come back in a couple of weeks?

166W: I would not object to that however the way it's set up right now Thursdays

(through) Saturdays is really inconvenient for me he was doing this at ten

o'clock he picked her up at ten o'clock because he was working at the time, I

work at nine o'clock and I've been staying home till ten o'clock because he

wasn't picking her up till then, now I have no idea what his schedule is but I

know he's not there because the store is closed so I know he's not working

and the arrangement is very [inconvenient]

In this episode, H and W shift from the current activity of recommendation giving and engage in behavior and make moves that are typical of the activity of having-an-argument such as interrupting each other, making accusations, and threatening face. Although W mentions that the past event when H gave her a short notice of being unable to spend time with their daughter was rather an exception than a norm and that the situation was not a problem as a rule, she keeps referring to this event, which depicts H in an unfavorable light. She picks up the matter of responsibility that M has brought up earlier ("I just feel that you know there's some responsibility involved in this thing" (turn 139)). She depicts herself as a good and responsible mother as her daughter is her priority ("I got her, she's my daughter I mean what am I gonna do" (turn 138)). She did not carry on with her own plans but stayed with her child. In contrast, H is a person who lacks this responsibility as he did not take care of the child and did not give her enough notice. However, her main concern in that situation was not the child's interests but her own ones ("you know my plans were not important what about me?" (turn 139)). Thus, the conflict here has personal grounds, which is more likely to lead to having an argument than if it

involves a third party's interests. In any case, W's account of the event threatens H's face. H makes a defensive move, pointing out that W's interpretation is not correct. Here, the shift in the participation frame happens. W was addressing M when she was describing the event; H opposes W directly. H claims that he asked for a weekend switch but not demanded as W made it sound ("I didn't give you an ultimatum… I asked" (turn 140)) but W did not give him any answer (turns 144 and 146), and because of her actions he did not know what to do (turn 146). In this way, H shifts the responsibility for what happened to W. W tries to interrupt H a couple of times (turns 141, 143, and 145) to counterattack by making an objection (turns 141 and 143) and ascribing a reason for H's behavior (turn 145). Her attempts fail. In turn 147, W admits not giving an answer to H but then she makes a point that it would not have mattered in any case. Again, H is depicted as a person who would pursue his own interests and disregard W's ones. In his turn, H claims that he was the one who was always encouraging communication between the parties as a way of dealing with problems and W, on the contrary, has trust issues and obstructs the interaction process. W counterattacks H by bringing in facts that, according to her, shows that it is H who has trust issues (i.e., including in the property settlement agreement points that W should not remove built-in equipment (turns 150 and 152)). H, in his turn, accuses W of taking the spigot and the fireplace screen (turn 153, 157, 159). Finally, W blames H for ruining them ("Ron we feel that you totally screwed us "), which H opposes (turns 161-163). Thus, in this episode, the argument escalates from a mitigated form (W expresses her frustration with H's behavior while addressing M) to an aggravated one (W and H attack each other directly, using offensive words (e.g., screw)) and from a particular situation (i.e., H's failure to have the child for a weekend) to problems at a deeper level

(issues of trust, financial matters). M intervenes a couple of times to stop the development of the argument. First of all, in turn 156, M identifies the activity the parties engage in as arguing. M frames the intervention as a rhetorical question. M expresses a disbelief that H and W are arguing about such things as taking "the little spigot". The second intervention in turn 160 ("Come on") is an appeal to the parties to drop the argument and a marker that M does not treat the argument as serious. As the activity continues, M points out that certain matters should be dealt with in a different way. M shifts the focus on what can be done at the moment by introducing a new topic.

The mediator's intervention in turn 156 is similar to *relativizing* (Aakhus, 2003). Relativizing is one of the strategies mediators use to deal with impasse in the course of the session and is defined as "framing facts as points of view or discounting the grounds for a participant's actions" (Aakhus, 2003, p. 272). In the example above, the mediator downgrades the dialogue activity itself. By challenging the importance of the reasons for having an argument, the mediator makes the subject matter of the argument as insignificant and the argument as unworthy. "Come on" that follows in turn 160 is a bald on record intervention that presents a threat to the disputants' face. However, in the given context, this threat is mitigated, on the one hand, by the previous move that questions the seriousness of the dialogue activity. On the other hand, the form of the intervention itself signals that it is not a command but an expression of encouragement to stop the dialogue activity or an expression of disbelief that they continue their argument over such insignificant things.

Off-Record Interventions

Mediators do not always point out to the participants in a direct manner that a shift in activity happened and that topics or dialogue activities are inappropriate. They can redirect the conversation and refocus the parties on the task in an off-record manner. For example, mediators can change the development of the interaction by suggesting discussing a new matter. This group of interventions consists of such subtypes as *ignoring a topic, making a shift by initiating a new topic*, *summoning*, and *reformulating.*

Ignoring a topic. One of the patterns of this subtype is when the mediator acknowledges the participant's move but does not contribute to the development of the topic. Instead, the mediator signals the irrelevance of the participant's move by continuing the line of the previous discussion. This pattern can be illustrated by excerpt 62:182.

Excerpt 62:182

182M: =Make a suggestion then I hear what you're saying I hear what you're saying
            make a suggestion then, what do you think that Eric doesn't like the
            [every other week]end

183W: [Okay I don't   ] know what uh his off days are but it seems to me that if he
            were a manager writing his own schedule, and he saw that we couldn't arrange
            it [with the other off days]

184M: [Keep it okay   ] Nancy give us give us a a a choice or give us an
            idea what how can we resolve this

185W: Uh okay what kind of arrangement

186M: Uh huh

In the turns preceding the excerpt above, the focus of the discussion was on visitation arrangements. M asks W to "make a suggestion" in terms of the arrangement (turn 182). However, W in turn 183 brings in H's work schedule into the discussion and focus on what H could do in terms of changing it if he were a manager. It is not clear from the discussion whether H has an authority to write his own schedule or not. If H does write his own schedule, then W's move depicts H in an unfavorable light. Using the conditional mood, W creates an image of what a person in given circumstances would do. That is, a person who has power to write their own schedule and understands that the existing arrangement does not work is expected to change their schedule to make this arrangement work. If the person does not do this, they do not seem willing to cooperate. In this particular situation, H does not change his schedule but insists on changing the arrangement itself, which makes him, from W's point of view, unreasonable. In case H does not have power to create his own schedule, W's move depicts an unrealistic situation and thus does not contribute to the resolving the problem. In any case, W does not provide a relevant answer to M's question as she does not make a suggestion regarding visitation arrangements but tries to shift the focus of the discussion on H's actions. M acknowledges W's move but treats it as insufficient and irrelevant as he repeats his request to make a suggestion how to resolve a problem with visitation (turn 184). In the subsequent turn W checks if M expects her to talk about the arrangement (turn 185), and M confirms it (turn 186). Thus, these contributions also serve as evidence that W's move was an appropriate topical shift.

Another pattern of off-record interventions is moves where the mediator indicates irrelevance of the topic by not providing a conditionally relevant response to the

participant's move as it was done in excerpts 61:111 and 9:650 discussed in chapter 5 and excerpt 62:171. In examples 61:111 and 9:650, the mediator does not acknowledge in any way (at least, verbally) the participant's move, does not contribute to the development of the topic initiated by this participant, refers their turn to the other participant, and continues with the line of talk that preceded the shift.

In excerpt 62:171 the focus of the discussion was visitation issues. The (ex)-husband makes a move to change a shift in a topic, which, judging by his (ex)-wife's consequent move, could lead to having an argument. The mediator does not contribute to this shift and continues the preceding line of the discussion.

Excerpt 62:171

171M: What what options were you suggesting then?

172H: Okay like I said I want the the week to week thing.

173M: Week to week (   ) agree to shared to sh[are (   ]   )

174H: [Right   ] I mean we had them

          together we raise them together so far just because she's mad at me is no

          reason to take them away from me

175W: Well I'm not trying to take them away from him [I the arrangement   ]

176M: [(Could) you (could)] you go

          along with the uh shared raising part of the arrangement? As Eric as he was

          suggesting?=

177W: =Uh week to week I don't know because, I don't know how that's going to

          work out I don't think it would work out as well as uhm

In turns 171-173, the focus is on visitation issues. M asks H to express his position on visitation time. H makes a suggestion, which is acknowledged by M. However, in the next turn H accuses W of taking the children away from him, which leads to W's disagreement. The interaction has shifted from the topic of visitation time to the matter of taking the children away and is likely to develop into a quarrel. However, M's intervention in turn 176 prevents it. By asking W a question about what is her opinion of H's suggestion, W brings the discussion back to the point where the shift happened, that is, to the activity of negotiation and the topic of visitation.

In all these examples, the interventions are less face threatening acts. They do not question the inappropriateness of the disputants' actions overtly and, thus, do not present a threat to their positive face. These interventions do not threaten their negative face either as the imposition is minimal; the mediators keep the interaction on-task by continuing the previous line of the discussion in which all the parties engaged.

Initiating a new topic. Ignoring a topic and refocusing on the previous line of the discussion is an intervention mediators make when disputants have just initiated a shift. When the discussion has been off-task for some time, mediators employ another subtype of off-record interventions, namely, making a shift in the interaction by suggesting a new topic to discuss. Excerpt 11:379 is an illustration of this type of intervention.

In the following excerpt, the mediator brings a discussion back on track by suggesting moving to another topic. Prior to this episode, the focus of the discussion was on the visitation time on a regular basis. The (ex)-husband made an alternative proposal about how much time he would spend with the children. However, his (ex)-wife was not in favor of it and insisted on implementing her proposal. The disagreement between the

disputants gradually led to having an argument. The mediator makes a shift in the dialogue activity by introducing a new topic.

Excerpt 11:379

379M: Okay, this is I think Rich, I think this is a ah, a ah, a compromise on her part, ah, [first she]

380H: [What   ] what's a compromise.=

381M: =Well, she was saying that ah you said two week ah two evenings, plus,

382W: Then I changed it to the one.

383M: Plus, ah, six p.m. Friday to six p.m. Sunday=

384W: =Yeah, [then I changed it to]

385M: [Now,   now] you say okay, it'll be Wednesday night=

386W: =(another) night if that's necessary=

387M: =And she has agreed to one night and then she has agreed to ((PAUSE)) that you can keep them until Monday morning,

388H: All she's agreed is letting them sleep two nights at with me. That's not quality time.

389M: Well you you had suggested in your plan you had suggested ah two evenings per week.

390H: Um hm

391M: And she has agreed to one week one evening I mean, no, two overnights

392H: Yeah, and [she's agreed] to one=

393M: [(   )]

394M: =to one.

395H: Plus her every other weekend schedule. That's not a compromise (   ).

396M: [[Well, it is,] ah it's a slight compromise.

397H: [[(   )]

398M: Now, could we drop that for a moment? And go to the Easter vacation,

399W: Uh huh,

400M: And see if we can work something there?

401W: We'll just [split it in half

402H: [Are we   going to come back to that then?

403M: Yeah, we'll come to that.

404W: [[Why d]on't we just split it in half?=

In turn 379, M interferes to support W, making a point that she has already made a compromise in regard to visitation time. H asks to clarify what her compromise was (turn 380). In turns 381-387, M and W go over what W has agreed to. H expresses disagreement in turn 388, which is opposed by M (turns 390 and 391). In turns 395 and 396, H and M have an argument about whether W's proposal was a compromise or not. Finally, M asks to drop temporally the discussion over this matter and suggests a new topic, namely, visitation arrangement for the Easter vacation (turns 398 and 400).

In the excerpt above, the dialogue activity of clarifying was gradually moving to escalation of disagreement. In turns 395 and 396 (and likely in turn 397), H and M engage in having-an-argument about whether W's actions can be called a compromise, which is not relevant for the task at hand. M does not directly point out that the dialogue activity was inappropriate. He asks to drop the subject matter of the discussion and go over a new topic. The fact that he asks to stop the discussion on this topic temporally

("could we drop that for a moment" (turn 398)) and promises to come back to it later on ("we'll come to that" (turn 402)) is evidence that the shift is not because the topic is not appropriate or the discussion on this subject matter is over but because the participants engage in an unproductive dialogue activity. It is also supported by M's hope to be able to "work something there" (turn 400) as opposed to what is happening "here". The shift in the dialogue activity is accompanied by the shift in the use of pronouns. In contrast with the current dialogue activity where each participant was addressed separately, M frames a shift and a new dialogue activity as collaboration by using "we" ("could **we** drop that for a moment", "see if **we** can work something there", and "**we**'ll come to that"). Further on, H and W follow this pattern and shift to the pronoun "we", too (e.g., "**We'll** just split it in half" (turn 401) and "Are **we** going to come back to that then?" (turn 402)).

In the example above, the mediator made a shift by suggesting a new topic. Excerpts 62:28 and 37:24 are examples of bringing the interaction back on track by introducing a new topic with help of a question. In excerpt 62:28, the interaction shifts from the dialogue activity of information gathering and talking about the medical condition of one of the children to having an argument and focusing on W's actions. M has to interfere and refocus the parties' attention on arrangements for the children.

Excerpt 62:28

28M: Is it is it somewhat under control now the seizures or what?

…   ((10 turns (turns) are omitted))

39W: He hasn't had any well he hasn't had any where I reside ((telephone rings)) uh
        any uh, uh, very serious seizures uh, like this morning he woke up like he was
        going into a seizure and he made a like a they make a noise uh during the attack.

And I don't think he really went into seizure but it was like he was you know during his sleep he might have you know started to go into one but he didn't he just made a gasp in his breath when he was sleeping and uh=

40M: =Are these are these uh (petit   )?

41W: at his regular time where he could get the extra rest that he needed because sometimes he doesn't uhm sometimes he doesn't function too well if he's had you know a certain uhm certain amount of loss of sleep and I thought that instead of him having his parents come to his house the house that we resided in and take them to school earlier then I felt that if I were at home because I work part time I you know most of the time I am at home, then it would be better for me to take them to school [than   ]

42H: [(But y]ou would) take them to school early that's why they would come to the house so they wouldn't have to be taken to school early. Uh (if) my sister had moved in she would take she would watch them when I went to work earlier and then my father would come at eight-thirty and drop them off at school at eight between eight-thirty and nine o'clock because they (   ) have to be there at nine o'clock, but, she seems to think that it's better she's so so when I started doing that she says well don't do that I'll come by in the morning I'll watch them until time for them to go to school and then that'll go for a couple of days and then she'll say well that's too far for me to drive I'll keep them for that's too far for me to drive you bring them over=

43W: =Right [it was more   ]

44H: [It was okay w]hen it was okay as long as it was okay with her she

              doesn't wanna sit down and discuss it and see both sides she's okay when it

              comes to her uh she'll like one morning when I had arranged for my mother to

              to my mother to to to come to the house okay and she she said that's that's

              okay because I am off, I don't go to work I forget what time, I'll be there and

              I'll watch them all of a sudden at five o'clock she shows up the job had called

              her at four to come in at six now she was gonna go drop them off at the

              babysitter at five-thirty that's okay but and that's when she poured the

              medicine down the drain because I said that's bad for him to go to be getting

              up that that early in the morning, I'll get my mother to come here=

45W: =Well uhm [a lot of times   ]

46H: [See she she's just] it's all what she decides and that's that's where

              the problem comes in everything has to be what she decides and she'll use the

              kids she'll pull on them uh she used the kids to try to get her way

47W: Okay the [reason why   ] I said that it was

48H: [That's the way] ([   )   ]

49M: [So what] are you asking what are you

              specifically asking for at this particular time, do you want a structured

              visitation order?=

50H: =I don't want a visitation order I want cus[tody I want joint custody joint]

     M asks the parties about the current condition of one of their children who suffers

from epileptic seizures. These seizures were one of the reasons why W decided to get the

restraining order on visitation. In the omitted turns, H and W inform M that their son still

has to take medication. However, they have different views of whether the child's condition has improved. H says that their son continues having seizures, while W thinks that after she got the restraining order their son feels better as he hasn't had any serious seizures (turn 39), and she attributes the minor ones he has to lack of rest and sleep. W uses this current condition to support her argument that it would be better if the children stayed at her house and she took them to school rather than H's parents as when the children stay with their father they have to get up earlier (turn 41). H disagrees with W on this matter and gives his arguments to prove that staying with him is more beneficial for the children as his parents can take them to school later (turn 42). However, further in the turn he blames W of her inconsistent behavior ("she says well don't do that I'll come by in the morning I'll watch them until time for them to go to school and then that'll go for a couple of days and then she'll say well that's too far for me to drive I'll keep them for that's too far for me to drive you bring them over"). In his consequent turns, H keeps accusing W of trying to do everything in her way and using the children for that (turn 44 "It was okay when it was okay as long as it was okay with her she doesn't wanna sit down and discuss it and see both sides she's okay when it comes to her"; turn 46 "she used the kids to try to get her way") and bringing in into the conversation the past events that depict W in an unfavorable light (turn 44). When W tries to give her interpretation (turns 43, 45, and 47), H does not let her speak. In this way, the discussion has gradually shifted into having-an-argument. M's intervention in turn 49 does not signal inappropriateness of the dialogue activity and the topic directly but it does not contribute to the development of the dialogue activity that H and W engage in and the topic introduced by H. M asks H about his position on the arrangement for children that has been mentioned earlier in the

interaction and brings in the matter of custody into the discussion. By using a question, M shifts the discussion back to the task at hand in a less disruptive manner as it does not threaten the face of any party in the way it can happen when M points out some violation in how the interaction unfolds.

Excerpt 37:204 is one more example of the mediator's redirecting the parties by means of a question. The disputants discuss with whom their youngest daughter Alison, who is 16 year old, should live. Previously, Alison lived with her mother and then with her father for a while. At the moment of the session, she was again with her mother. While staying with her father, she tried to commit suicide because of the unshared love. The disputants have different views of what is necessary for their daughter. The (ex)-husband insists that Alison has a problem and needs therapy, while his (ex)-wife thinks that seeing a psychiatrist would not do any good to her. In the following example, the (ex)-wife tries to stop an argument and refocus the conversation on Alison's interests. However, this attempt fails. The mediator interferes and redirects the interaction without pointing out that the violation has happened.

Excerpt 37:204

204W: Why isn't Kelly speaking to me now did I ever do anything to hurt her?

205H: Because she sees what's happening

206W: The only thing I want to say I don't want to argue with you okay? Whatever's best for Alison

207H: My oldest daughter's first words were

208W: You act like a professor that's the whole that's what the kids say God Mom I can't talk to Dad he goes above my head

209H: That's (   ) I wish my oldest daughter could be here so you could

interview her she doesn't feel that way. I think most of it stems from the oldest

daughter was more or less raised with me and the other two were raised with

her. H[ere again I think   ]

210W: [The oldest daughter]

211H: its guidelines and u[h (   )

212W: [the oldest daughter was raised by you now wait just a

minute you know I raised her from the time uh she was born

…   ((5 turns are omitted))

218W: [Kelly's a different person Kelly's a different person than Alison.

219H: Why why are people different?

220W: I don't know [why are we different

221H: [Isn't it the way they are parented? What guidelines they are

presented with? How they're led through their adolescent years?

222   ((PAUSE))

223W: [[I don't see how

224M: [[Lynelle you're saying that uh what is in the best interest of Alison?

225W: If i[t

226M: [That's what you're saying=

227W: Right if it's best then she's to go back

In the turns preceding this episode the participants engage in argument about child custody and touch upon child support, Alison's behavior, the relationships between W and Alison and W and their elder daughter Kelly. In this excerpt, W points out that she

does not want to argue and will do what is best for Alison. However, H does not stop having-an-argument and makes a reference to the elder daughter. W does not let H finish and accuses him of speaking in such a way that he is difficult to understand. In turns 209 and 211, H expresses disagreement with W but addresses M. He brings a reference to the elder daughter, who could serve as a witness for him. He also makes a statement that the difference between Kelly and the other two children in the family is due to the fact that he raised her and provided with guidelines while the other two were brought in by W. W, in her turn, expresses disagreement with this statement in turns 210 and 212. In the omitted turns, H and W argue who raised Kelly. In turn 218, W points out that their daughters are simply different people, which leads to H's point that people are different because they were parented in different ways. After a pause, W starts making a move at the same time as M intervenes, and she lets him take the floor. M addresses W and refers to her statement in turn 206. M asks W a question about what she was saying about Alison's best interests. In this case, M does not point out in a direct manner that the discussion has digressed from the matter of child custody and focused on the issues that are not relevant for the current session. However, M's not engaging in the discussion is evidence of the violation. Instead, M brings the interaction back on track in a more constructive way by asking a participant to elaborate on an appropriate topic. In this way, M's intervention diminished the threat to the disputants' face.

In the previous chapter, it was shown that shifts in off-task activities can be provoked by certain topics. In the same manner, interventions in the form of introducing a new on-task topic can lead to bringing the interactions back on track. On-task topics serve as a resource for the mediator to discipline the talk in the mediation context.

Summoning. One more way to bring interaction back on track is to summon a party as it can be illustrated by excerpt 11:635. The following episode happens at the end of the session. The disputants have disagreement over visitation arrangements at the weekend, and the mediator suggests talking to the attorneys to deal with the issue. The (ex)-husband asks to review what the parties have agreed upon before they talk to the attorneys. The disputants go over the plan. The disagreement emerges when the (ex)-wife insists on her (ex)-husband's having the children on Wednesday nights, while he prefers to have them on Tuesdays. The (ex)-husband accuses his (ex)-wife of suggesting this arrangement on purpose, which she denies. The mediator interferes by summoning the (ex)-husband, who, after a pause, renews the summing up of the plan.

Excerpt 11:635

635M: In the meantime if you can't agree to the weekend, then we have to call the
         attorneys and say the parents can't agree? (it'd be up to [you) to] give them

636H: [(What)]

637M: some suggestions. If you want to I can, (?)

638W: (   ) ((SOFTLY))

639M: 'scuse me, ah your attorney can explain to you (why she left), and ah we we
         can talk to her on the telephone (if necessary), but if you want to I could meet
         with you and your attorney to see what he would (like).

640H: Let's let's do that and before we do that let's go through what we have agreed
         upon so my, what what I heard was Jen saying, every other weekend, five
         thirty other Friday and I drop the children at school

641W: Mm

642H: On Monday.

643W: (   )

644H: Right

645W: Yes ((SOFTLY))

646H: An' then Tuesday or Wednesday evenings?

647W: Wednesday evenings ((SOFTLY))

648H: Y'know Jen, I really feel, you're doing that on purpose

          [so I have to drop out of those

649W: [Rich I also have commitments Wednesday evenings [and] I'm not doing it on

650H: [two]

651W: purpose I think it's the middle of the week and it makes more sense

652M: Rich?

653   ((PAUSE))

654H: Ah, five-thirty in the evening until school. So, what I am picking up is exen-

          essentially the children sleeping in the apartment three nights a month.

655M: Before [we   ah] move in to judging this plan,

656W: [(   )?]

657M: ah, let us talk about the the weekend Easter Easter week now you'll have 'em

          from eight-thirty Wednesday

658H: Uh hm

     In the excerpt above, H and W engage in summarizing the main points of their

agreement on visitation time (turns 640-647). W's response in turn 647 to H's inquiry

about visitation on the day in the middle of the week (i.e., Wednesday evenings versus

Tuesday evenings) leads to the emergence of disagreement. W prefers H to have the children on Wednesday evenings. However, earlier in the course of the session H mentioned that it would interfere with his professional obligations, as he is a member of two associations that meet on Wednesdays. In turn 648, H accuses W of picking up that day on purpose as she knows that he has commitments and the arrangement she proposes will have negative consequences for H. He will have to drop his membership in the associations in case he has the children on this day. In turn 649, W denies having a malicious intent in making her choice. She claims that she also has commitments on Wednesday nights. However, she does not specify what those commitments are. As having obligations may only put her in the equal position with H, she makes a shift from her own interests to the interests of the children to strengthen her argument. She says that Wednesday evenings would make more sense as this is the middle of the week, thus bringing in again the argument that she made earlier at the beginning of the session. Her point was that it would be more inconvenient for the children to stay with their father on Tuesdays as they would have to go back and forth too often ("if they just come back on Sunday I'm trying to think what's best for them but if they just come back Sunday night and they hardly get nestled in Monday night and they're out again Tuesday night"). M intervenes to prevent the development of an argument by summoning H by his name. Although M does not point out directly that the participants have digressed from the dialogue activity, the fact that H does not pursue the disagreement and goes back to reviewing the plan in turn 654 ("Ah, five-thirty in the evening until school.") is evidence that he treats M's intervention as the indication of the dialogue activity going off-track. However, further in his turn, he makes an attempt to frame this part of the plan as not

appropriate as "the children sleeping in the apartment three nights a month" is not spending the quality time with them. Once again, M does not let a shift in the dialogue activity happen by suggesting going over visitation time during Easter week.

The mediator uses summoning to bring the interaction back to the previous line of discussion. This intervention presents a minimal threat to the disputants' positive and negative faces as it does not undermine their image and does not impose on them.

Reformulating. Another type of intervention mediators make when the activity goes off-task is reformulating what a party says. Excerpt 12:85 is an illustration of this subtype of off-record interventions.

In excerpt 12:85, the parties discuss visitation time, in particular, the situation when the (ex)-husband cannot have the children on Wednesdays due to being away on a business trip. In this event, he would like to make up this time on some other day. At first, the (ex)-wife was reluctant to the idea of the compensatory time as she was afraid that it could be disruptive for the children but later on she changed her mind. However, as the interaction progresses, disagreement arises over this issue again, which leads to a shift in a dialogue activity. The mediator intervenes by reformulating the (ex)-wife's position to refocus the disputants on the on-task activity.

Excerpt 12:85

85W: If you can't be there if you're not going to be there on Wednesday night, let me
        know and we'll have to decide on some period of time ahead and maybe we can
        switch it to either the Tuesday night prior or the Thursday night after.

86H: Well what about Monday night ((WHININGLY))

87   ((PAUSE))

88W: You're having them until Monday morning on every other weekend, so I think

Monday nights

89H: Jen, [I'm not out o]n vacation.

90W: [disruptive again]

91H: I'm not earning [earning money half of which goes

92W: [I didn't say that I said if you just brought them back Monday

morning and they only get to see me after school I [think that's too disruptive.

93M: [I think I think what you're saying is that you will agree ((PAUSE)) to let him

make up that time, but it has to be either Tuesday or Thursday=

94W: =of that same week

95M: The same week. ((PAUSE)) How long would you be gone?

96H: Like I said a couple a minutes ago, I'm normally, I have to go back east, so I'm

normally out ah three to four days one trip, and three to four on another.

In the excerpt above, W suggests that H should inform her about his business trip

ahead of time and mentions a possibility to reschedule visitation either to Tuesday or

Thursday nights of the same week (turn 85). H asks her if it would be possible to have

them on Monday night instead (turn 86). W objects to this proposal on grounds that he

has the children at every other weekend until Monday morning and it will be disruptive

for the children to come back to him on Monday night (turns 88 and 90). H treats W's

move as an attack and makes an attempt to defend himself, pointing out that he is not

going out on vacation and bringing in financial issues (turns 89 and 91). W, in her turn,

objects to such an interpretation of her words and repeats her argument against H's

having the children on Monday nights (turn 92). M intervenes by reformulating W's

position (turn 93) and shifts to the activity of information gathering (turn 95).

In this episode, disagreement emerged between H and W regarding the visitation

time. H treats W's objection to his making up the time on Monday nights as her

unwillingness to agree to the compensatory time in general. H takes a defense stance. In

turn 89, he makes a point that he is "not out on vacation", which means it is not his fault

that he misses the visitation day as it is out of his control when to go on a business trip

and he is not having fun while away. In turn 91, he brings in financial issues pointing out

that he is not earning enough money, half of which he has to spend (probably, on the

children). Once again, his point is that he has to be away out of the necessity. In this way,

he shows that his request for the compensatory time is legitimate and W's behavior is

unreasonable and her reluctance to agree to this may be viewed as her desire to punish

him. W denies all the implications and repeats again her argument that what H proposes

is not good because it is disruptive (turn 92). Thus, she makes it clear that her concern is

the interests of the children and her actions are not aimed at putting H in a

disadvantageous position. However, this time she upgrades the assessment of H's

proposal from "disruptive" to "too disruptive", which can be evidence that W's

unwillingness to agree to making up the time on Monday nights is quite strong and the

chances to come to agreement on this matter are very low. The discussion is gradually

shifting to having an argument. M intervenes to refocus the parties' attention from the

problematic option to a more viable alternative (turn 93). M reformulates what W has

said before and makes an emphasis on W's willingness to agree to the compensatory time

and highlights the possible days when it can happen, which W confirms (turn 94). In turn

95, M makes a shift to the activity of information gathering. In this way, M does not let the argument develop and brings interaction back on track.

Similar to ignoring a topic and summoning, the mediator uses reformulating at an earlier stage of going off-task to keep the disputants focused on the previous line of discussion. The imposition in this case is minimal, thus, this intervention does not present a threat to the negative face of the disputants. It also diminishes the threat to the positive face of the disputants as it focuses on the wife's willingness to agree to the changes. It depicts the wife as a collaborator (the wife's positive face). At the same time, it shows that the husband's wish is taken into consideration (the husband's positive face).

To sum up, mediators employ different types of moves to terminate the development of an off-task dialogue activity or topic and to enforce the institutional format of talk. These interventions vary in their directness and fall into two categories, namely, on-record and off-record interventions. On-record interventions vary depending on the type of account or its absence (i.e., mediator-centered, participant-centered, session-centered, and non-centered). The off-record interventions consist of such types as ignoring a topic, initiating a new topic, summoning, and reformulating. The general principle that underlies interventions is the mediator's orientation toward the disputants' face. The intervention type depends on what materials are available to the mediator in a local context. Topics serve as a resource for bringing interaction back on track.

In the next section, I will discuss how these empirical findings contribute to understanding the interaction order and the institutional order, communication design, and argumentation.

Discussion

Sustaining the Institutional and the Interaction Orders

In contrast to the two parties trying to work their disagreement out themselves, their entry into mediation invited the mediator to take on some responsibility for the way the parties interact with each other. We can see how this is realized as the mediator attempts to control topic and dialogue quality of the interaction. The mediator sets up the agenda for the session, introduces topics for the discussion and dialogue activities to engage in, and manages topic and dialogue activity violations in different ways, from indicating directly what topics and dialogue activities are inappropriate to terminating their development by ignoring them.

One of the difficulties that mediators face is that they cannot sanction parties for violating the rules of the discussion the way judges do (e. g., fining a person who misconducts). They can point out that violations happened and threaten disputants with a court appointed psychologist or losing control of their decision making to a judge in a courtroom if they do not collaborate. However, mediators cannot really punish the disputants for violations. The situation gets complicated as mediators have to manage violations in such a way as not to disrupt the interaction order themselves as this kind of intervention can threaten the parties' face. This is an issue because of the nature of the mediation talk. Although it is a type of institutional talk, it is not that formal as, for example, court hearings. Thus, the institution of mediation is concerned not only with keeping the institutional order but it is also focused on enforcing the rules of ordinary interaction in a greater degree than more formal types of institution. In a way, mediation ends up treating certain aspects of ordinary conversation as formal rules.

What we have here is a fundamental feature of the institutional/interaction order tension. Mediation is informal relative to other forms of dispute resolution, and yet there are constraints on what can go in a mediation session, so a certain kind of interactional dilemma arises, which is a variation on the widely diffused dilemma of face. For example, the participants of intellectual discussions in institutional settings face a dilemma of balancing the concerns for face and supporting intellectual standards (Craig & Tracy, 1995).

Where certain settings allow a third party to be authoritative, which, in a way, means a permission to be positive and negative face violating, the mediator does not have this liberty. As face is an organizing feature of the interaction order, sustaining it becomes an issue for the mediator. Letting the dispute go is face-threatening for the participants. But trying to get them talk in the ways preferred in mediation also carries face risk. Mediators deal with both. They have to find more subtle ways to hold the interactants to a topic and a dialogue activity. Thus, the common practice is not just to signal violations but also to provide an account why the topic is irrelevant. Mediators mitigate the disruption by 1) attributing the irrelevance to their lack of competence in certain areas (mediator-centered interventions), 2) identifying the raised issues as being out of scope of the questions that can be solved in the mediation setting and thus shifting the responsibility to the institution itself (session-centered interventions), or 3) creating their intervention in the way that it seems that the parties are still in control of how the interaction should proceed (participant-centered interventions). Mediator-centered interventions framed as the mediator's unwillingness to discuss certain issues are more likely to threaten the face. However, they can be downgraded by being constructed as unnecessary rather than

undesirable. Also, as mediators act on behalf of the organization, their expression of lack of interest in certain issues can be understood not as personal indifference but professional one.

Keeping the interaction order is vital for the interaction processes, but it has to be taken into account that in institutional talk maintaining the institutional order comes to the forefront. While off-record interventions such as ignoring a participant's move may bear some threat to his or her face, it helps to keep the focus on the task and thus to sustain the institutional order. Also, the multi-party interaction gives a certain advantage to the mediator as they can opt to provide a conditionally relevant response to the other party (see, for example, excerpts 61:111 and 9:650), which makes the intervention less threatening. In excerpt 9:650, for instance, the wife and the husband ask the mediator two different questions. The wife's question initiates a shift to an off-task topic (i.e., the mediator's intention to be an English teacher), whereas the husband's question was related to what was discussed earlier (i.e., an agreement). The mediator does not acknowledge verbally the wife's move and gives a conditionally relevant response to the husband's move. Thus, mediators construct their interventions depending on what moves the parties make and what opportunities they provide. In this way, all the participants are involved in constructing the interactivity.

One of the off-record non-threatening ways to bring the interactants back on track is asking for information and introducing a new topic. Also, these types of intervention allow mediators to stay neutral. It is not neutrality in the sense of avoiding taking someone's side but in the sense of being neutral to the interaction itself, that is, not being involved in some activity, for example, having an argument. In a way, it is possible to

draw the parallel between these two ways mediators intervene into the discussion and the styles of therapeutic interventions such as interventionist and restrained types of therapy. In the restrained style, the therapist has to be "a distant, respectful questioner" (Minuchin, Lee, & Simon, 1996, p. 13) who does not challenge clients, give opinions and is not "the complex, multifaceted person that she is outside of it" (Minuchin et al., 1996, p. 13). In the interventionist therapy, the therapist is more active and engages in the activity, s/he is not afraid to impose an opinion, to use personal responses, and to challenge the participants (Minuchin et al., 1996). Mediators' interventions in form of asking for information is similar to this restrained therapy while their on-record interventions are more like the interventionist style.

We tend to think about neutrality as a big objective and to think about it in terms of biased/unbiased actions. But it has to do with the interaction and its quality. As an agent of organization, the mediator takes an obligation in terms of crafting interactivity and has to work with others to create an interaction of quality. Mediators are obliged to make the parties take responsibility for the quality of their actions. Facework is one of the things to deal with that. The interventions are designed to involve the disputants into the design of the quality. Here, the mediators face an issue of double-design. They have to get the disputants focused on the task at hand and, at the same time, to deal with a dialogue quality. The design aspect of the mediator's work will be addressed next.

Communication Design

How people craft an activity is "evident in the interventions people make to realize preferred forms of interactivity and avoid nonpreferred forms" (Aakhus, 2007, p.114). The findings show that the mediator's moves are consequential for the interactivity, which is

in line with Dingwall's (1988) idea of mediation as an orchestrated encounter. Contrary to the belief that mediation is a type of encounter where parties have control and mediators do not have power over the outcome of the meeting, Dingwall suggests, "mediators can play a very active role in orchestrating these encounters in ways which seem inconsistent with the aspiration to party control. In this case, it is clear that the mediator has her own view of what will constitute an acceptable outcome and is able to make use of her control of the encounter frame to push for this" (p. 165). This is consistent with Aakhus's (2003) view of the mediator as a designer of interaction. The mediator uses the language as a tool to reconstruct an argumentative discourse to solve the conflict (Aakhus, 2003).

The analysis shows that mediators attempt to construct an interactivity that allows achieving the institutional goal of the encounter. Their interventions contribute to maintaining the on-task mode of interaction. As a designer, the mediator adapts to the situation and uses different techniques to bring the interaction back on track depending on the disputants' actions. This can be seen especially in those cases when the mediator has to intervene a number of times to terminate the development of an off-task discussion as it happened in excerpt 33:130 discussed in the previous chapter. First, the mediator was employing off-record interventions (e.g., summoning), giving the disputants a chance to stop having an argument in a non-threatening manner. When they failed to do that, the mediator used a session-centered type of intervention, explaining directly that the disputants engage in a dialogue activity that is not appropriate for the mediation session. Finally, the mediator exercised her/ his interactional power to terminate an argument by means of a mediator-centered intervention. The disputants' persistent resistance to end an

off-task activity resulted in the mediator's change of techniques from less face-threatening to more face-threatening.

The mediator does act as a designer of the mediation activity but other disputants contribute to the design of interaction, too. The mediator's moves depend on what is available in the local context, which was partly discussed in the previous section (e.g., the mediators' moves in excerpts 61:111 and 9:650). This is also evident in the dependence of the types of intervention on the subject matter of the discussion. For example, in this specific court financial issues or court process are off limits in the mediation. When the disputants bring in these topics into interaction, mediators dismiss them on the grounds of either being incompetent in these questions or considering these issues out of scope of the session. When the parties bring some past events, the mediator does not have this option and uses other types of intervention (e.g., expressing his/her unwillingness to discuss a certain topic). Thus, the participants are co-designing a mediation encounter.

Speaking of topics, they serve as design material for constructing a mediation encounter. As it was pointed out in the paragraph above, different off-task topics enable the mediator to provide different accounts for terminating their development. At the same time, on-task topics are a resource for the mediator to bring the interaction back on track. It can be seen, for example, in off-record interventions where the mediator terminates the dialogue activity of having an argument by initiating a new topic (see, e.g., excerpts 62:28 and 11:379). By introducing an on-task topic that is less emotionally loaded, the mediator manages disagreement and makes a shift to an on-task dialogue activity.

Strategic Argumentation

Paying attention to features of mediation encounter as institutional talk and design work is important for understanding argumentative discourse. The analysis of mediators' interventions expands our knowledge of strategic argumentation in an institutional setting, whether it is understood in terms of strategic maneuvering (van Eemeren & Houtlosser, 2001) or reconstruction-as-design (Aakhus, 2003).

Analyzing the messages mediators produce to manage impasse, Aakhus (2003) identifies three strategies which mediators use to shape disagreement space in the course of mediation sessions. In managing impasse, they use linguistic devices to redirect the focus of the discussion, to temporize the dispute, and to relativize facts. The present study of mediators' interventions complements this research by showing different techniques mediators use to implement these strategies, redirecting and relativizing in particular. For example, mediator-centered interventions focusing on the mediator's incompetence in certain areas, session-centered interventions emphasizing that the matters are out of scope of the session, off-record interventions such as making a shift by introducing a new topic and reformulating are specifically employed to redirect the discussion around the topics that cannot be resolved. Whereas the strategies Aakhus defined are discovered by focusing more on the rational quality of the dialogue, the interventions discussed in this chapter have a different source, namely, face concerns.

As far as strategic maneuvering is concerned, it is typically thought of as what an arguer does to shape disagreement space. It is originally related to an argumentative activity between two parties. Mediation is different in this respect as it involves a third party. However, shaping disagreement space is pretty much the only work mediators do.

The strategic maneuvering in the context of mediation is also different from an Amsterdam school view of strategic maneuvering as in the pragma-dialectical approach argument is seen as the primary activity. This study follows Jacobs and Jackson's idea that argument is derivative of other kinds of activities where it principally functions in managing disagreements that arise in the conduct of activity. In this respect, the present study expands the research on strategic maneuvering and brings it to a different level. The ways mediators construct their interventions to signal violations reflect its presentational device level. The mediator has to take into account demands of the audience (e.g. saving their face) in crafting their moves. This is evident, for example, in using less threatening off-record and on-record interventions.

The analysis of interventions reveals that strategic argumentation is shaped by the interactional and institutional affordances and constraints of mediation encounter. For example, the format of the talk that involves three participants gives the mediator a chance to terminate an off-task topic introduced by one participant by ignoring it while providing a conditionally relevant response to the other participant (e.g., excerpt 62:182).

The institutional goal of the encounter conditions what interventions are appropriate. For instance, the moves such as mediator-centered interventions that emphasize the mediator's unwillingness to discuss a certain issue may be improper in some other argumentative discourse (e.g., the ideal critical discussion) are acceptable in the course of the mediation session as the mediator acts as a representative of an organization and enforces the rules of that organization.

At the same time, mediation talk puts constraints on the ways and the means the mediator can use to craft argumentation. For example, the termination of an argument by

stating that the issue is out of scope of the meeting agenda or the mediator's competence can be done only in regard to certain questions (e.g., financial issues).

To conclude, mediators employ different resources to keep the disputants on track and to gear them towards reaching an agreement. When the disputants go off-task, mediators employ different types of intervention that vary in their directness and depend on the local context. Interventions differ in terms of managing multiple goals and demands that the interaction presents. They are organized by the sense of the preserving the interaction order but also by having a particular type of interaction, that is, mediation. The lack of information about what sessions each mediator conducted did not make it possible to observe routine practices of individual mediators. What was of interest, however, is common routine practices that mediators use across sessions, and the data from the whole corpus of transcripts enabled me to do that. The next chapter will examine other resources mediators use to shape an institutionally preferred form of interactivity, namely, it will explore how they use institutionally appropriate identities of participants to foster a collaborative mood of interaction.

CHAPTER 8

SHAPING MEDIATION ACTIVITY

This chapter examines how the mediator contributes to formulating a particular type of interactivity by bringing to the forefront institutionally appropriate identities of participants. It explores and illustrates the relationship between social roles and social epistemology of interaction.

In the course of interaction, certain identities of interlocutors become more prominent than others through the uses of language that draw out and highlight these aspects of the interaction. As Drew and Heritage (1992) point out, the institutional talk takes place when participants' institutional or professional identities are made relevant to interaction. This aspect of interaction is related to the social epistemology and social relations dimension of institutional talk. This dimension can manifest itself in interactional asymmetries in terms of professional "cautiousness" in interaction, knowledge, participation, conversational resources, and ways of reasoning (Atkinson, 1992; Bergmann, 1992; Clayman, 1992; Drew & Heritage, 1992; Gumperz, 1992; Hutchby, 1996; Levinson, 1992; Maynard, 1992; Pomerantz, 1988; Zimmerman, 1992). For example, the professional "cautiousness" can be observed in how professionals try to maintain a neutral position while conducting news interviews (Clayman, 1992) and psychiatric intake interviews (Bergmann, 1992; Maynard, 1992) or questioning clients in Small Claims Courts (Atkinson, 1992). Gumpertz (1992) shows how inferences interactants make about other participants based on their stereotypical view of members of stigmatized ethnic groups have a pejorative effect on the outcome of the interview. The previous chapters established that the relation of interactional asymmetries of

institutional talk to social relations can be seen in the instances when mediators control

the agenda of the talk through the use of references, the introduction of institutionally

preferred topics and dialogue activities and the prevention of institutionally inappropriate

topics and dialogue activities. At the same time, the findings showed institutional

asymmetries in terms of knowledge. In their turn, the identities evoked in the course of

the talk can be also related to the epistemic quality of interaction. These identities can be

used as a resource to control the participation in interaction, and, thus, the development

of the discussion. For example, different social relations of participants (e.g., a husband-

wife relation versus a father-mother one) provide different grounds for reasoning, which

opens possibilities for shaping interactivity in various ways.

Schegloff (1992) argues that the analysis of characterization of the participants

should be "grounded in aspects of what is going on that are demonstrably relevant *to* the

participants" (p. 109). In other words, to see what identity becomes prominent for the

interaction, it is necessary to look at the terms that participants themselves treat as relevant

at a particular moment "for producing and interpreting conduct in the interaction" (p.

109). In line with that approach, what is of interest for this study is how the mediator's

uses of language construct certain identities for the participants and how that shapes

interactional possibilities. They invoke identities as an exercise in articulating what is

possible in this interaction and exercising control over the interactants. The mediators are

not just doing what is appropriate for this institutional context; their actions are an act of

constructing identities out of what is available there. Participants can act in different ways,

for example, as an ex-husband and an ex-wife, or a male and a female. However, relative

to the institutional agenda of the meeting, for the moment of interaction they are

encouraged to perform in the capacity of parents, on the one hand, and to be collaborators, on the other one. What is important about these types of identity is that they do not contradict each other but they are tightly intertwined.

Mediators invoke and reinforce these identities by means of references they bring into interaction and moves they make, which are the focus of the analysis in this chapter. To select examples for the analysis, each transcript of mediation session was examined, first of all, in terms of membership categories the mediator uses in referring to the disputants. Second, the use and framing of these categories were examined across all the transcripts. Third, the analysis focused on how the features associated with these identities are employed in the course of interaction. Finally, mediators' self-reference tokens were studied. The examples were categorized through a grounded, inductive approach.

The following section examines how the social relations shape the epistemic quality of the interaction. First, it describes how mediators make relevant the identity of parent to interaction and, next, how they use the invoked identity to construct mediation as a collaborative activity. The final section discusses how activity and identity are interrelated. On the one hand, activity is constitutive of the identity. On the other hand, it is possible to regulate the activity by making certain identities relevant for interaction while discouraging others. Thus, the identity serves as a resource that mediators draw upon to orchestrate interaction.

Types of Identities

An Identity of Parent

Mediators work on the parent identity at different points in mediation. Most of the time they start constructing this identity in the introduction speech. In the introduction

speech, mediators set up a scene of the session. They explain to the participants the rules and the procedure of the interaction process and their rights and state the goal of the meeting, which is to work out a plan for their children. The focus of the session is the interests of the children and the best arrangements for them; hence, parties of this interaction, in the first place, participate as parents, rather than a husband and a wife going through divorce, ex-spouses, or people who are in conflict with each other. Excerpt 18:4 is an example of how the mediator enforces this identity. The episode takes place at the beginning of the session when the mediator explains to the parties why they are having this meeting.

Excerpt 18:4

4M: How about for you Carol, what's your understanding of why you're here

5W: We're in a stalemate because we can't come acr- upon an agreement ourselves on child

        support and (   )

6M: 'Kay so there's a difference, then, in what you each would like for, for Norman ((PAUSE)) um for how, how you're with him and how you you take care of him ((PAUSE)) and ordinarily there are two different ways of resolving that difference ((PAUSE)) one would be by the judge or the commissioner, listening to to both sides, uh as you will, and then making a decision ((PAUSE)) the other way is for **the two of you as Norman's, father and mother** ((PAUSE)) who, who know Norman probably better than most people do and certainly more than a judge will ever know Norman ((PAUSE)) the hope is that **the two of you as parents** then, could develop a plan for him, that would be the best for him

((PAUSE)) so **this is a chance then for the two of you to work out something, for Norman** ((PAUSE)) you need to know that anything that we talk about here remains confidential, and that I don't make a recommendation to the judge.

In turn 4, M checks W's understanding of the reason for having the meeting. W's explanation is that she and H cannot come to an agreement on child support (turn 5). M, in his turn, sums up the situation (i.e., H and W have disagreement on who would take care of the child) and explains two alternative ways to deal with the situation (i.e., going to the court or making their own decision during the session), advocating the latter. M also points out that what is going to happen in the course of the session is confidential.

This example shows how the mediator promotes the identity of parent from the very beginning. The mediator emphasizes the parties' identity of parent by referring to the participants themselves (e.g., "the two of you as Joshua's, father and mother", and "the two of you as parents"). The way the mediator constructs these references makes it clear that, in the first place, the parties are taking part in this session and collaborating in the capacity of parents (e.g., "the two of you as parents then, could develop a plan" and "this is a chance then for the two of you to work out something, for Norman"). The construction of the identity plays off the fact that the disputants are biological parents. From that the mediator frames parenting as joint responsibility and joint decision-making in the interest of the child. The mediator is making an argument here about what a parent is and expects the parties to accept the conclusion the mediator lays out. They are biological parents (premise 1). All parents should be involved in joint decision-making (premise 2). Therefore, both parties should be involved in this process. In this way the

mediator sets the motive for participation. It is up to the parents to accept this framing or not.

There are some mediation theorists (e. g., Keltner, 1987) who are adamantly opposed to this framing of mediation saying that it means the mediator is taking the side of the child and that mediators are not to take any sides in a resolution process. However, in this episode, the mediator sets up a particular type of framing (in a rhetorical sense), rational for how the disputants should see their participation. The mediator links a way of talking about parenting as a joint responsibility to how the disputants should interact with each other in the course of the session to solve the problem.

In contrast with excerpt 18:4 where the mediator was constructing a hypothetical model of parent, excerpt 11:1 is an illustration of invoking the identity of parent as a standard move where mediators emphasize that the disputants are in control of the decisions made and that they need to take that responsibility. The mediator brings into the forefront the identity of parent by making reference to abstract people (i.e., idealized parents). Similar to the previous excerpt, this episode takes place at the beginning of the session.

Excerpt 11: 1

1M: As I mentioned to you I met with the two attorneys. ((PAUSE)) and they (
) explained to you that it is the policy of the court that whenever ((PAUSE)) **two
        parents** have reached complete agreement on ((PAUSE)) the living arrangements
        of their children

2W: Um hum

3M: on how the children are going to spend time with **each of the parents**

((PAUSE)) the ((PAUSE)) court ((PAUSE)) wants to give **the parents** an

opportunity to try to ((PAUSE)) work out those arrangements between themselves

((PAUSE)) whereas (   ) not **the parents**, and not the lawyers, and not

not me. So this is an opportunity for the two of you to try to work this out. Ah I'm

not a lawyer I'm not a judge or anything but the (conciliation here)=

In this excerpt, M goes over the policy of the court, according to which parents

have a chance to make arrangements for the children themselves and emphasizes that the

mediation session is an opportunity for the parties to work the things out.

In this example, in the opening speech the mediator brings in the identity of

parent. The mediator does it by referring to abstract parents (e.g., "whenever two parents

have reached complete agreement on the living arrangements of their children, on how

the children are going to spend time with each of the parents", "the court wants to give

the parents an opportunity to try to work out those arrangements between themselves").

In this manner, the mediator prepares the parties that they are expected to act as parents

in the course of the session. This example is different from excerpt 18:4 in terms of

framing. The mediator is constructing a different motive for participation. Here, the

parents are expected to be reasonable to each other in this session because that is what

mediation is about, that is, it is about self-determination of the conflict by those in

conflict. The mediator is to help to resolve it.

Thus, the identity of parent is the one that is institutionally acceptable and

preferable for the time of the session. The important point here is that the mediator does

not just bring the references to parents but focuses on aspects of being parents, that is,

parents are those people who know their child better than anyone else and act in their

interests (e.g., "the two of you as Norman's, father and mother who, who know Norman

probably better than most people do and certainly more than a judge will ever know

Norman (excerpt 18:4)). Thus, parents can create a better arrangement for their child than

the court ("the two of you as parents then, could develop a plan for him, that would be the

best for him" (excerpt 18:4)), and this session is "an opportunity to try to work out those

arrangements between themselves" (excerpt 11:1). In this way, the mediator constructs an

identity that is beneficial for achieving the goal of the session. Mediators draw upon two

different images of how the parties could take a stance toward each other and identify

motives related to their obligation or interest in non-interference by others. By using

different frames the mediator highlights ways for cooperating either as parents with a

joint obligation to their child or as parents with an opportunity to resolve their own

conflict without intervention by the state. These two different motives are similar in terms

of constructing the moment-to-moment stance. They both encourage the parties to be

reasonable. The commonality of how mediators do this reveals a certain practice, that is,

using identities to constrain the actions. Mediators appeal to idealized person/ role that

the parties should aspire to. The invoked image implies preferable moves to be taken by

the disputants and rule out others. This practice of shaping activity is different from

interventions on turn taking or commenting on the content discussed in the previous

chapters.

Disputants' Use of Parent Identity

To focus the participants' attention on the task at hand and to avoid emotional

tension between them, the mediator separates the identity of parents from those that can

have a negative effect on the process of deliberation: the identity of husband or wife, for example. The disputants can exploit the invoked identity to their advantage.

Excerpt 11:23 illustrates how the husband uses the "joint-obligation-to-the-child" motive to persuade his wife to make changes to the current arrangement. The mediator uses the material, that parties provide him/ her within the course of interaction, to emphasize the difference between the disputants' relationship as a couple and as parents. The (ex)-husband makes a point that he and his (ex)-wife were bad spouses and it was their mutual fault that the marriage did not work out. He admits that their actions might have had a bad effect on their children. The (ex)-husband states that, although they are still recovering from their relationship, the main concern at the moment is their children, and they are ready to do everything that is in the children's interest. The mediator continues the (ex)-husband's line of discussion and elaborates on the idea that people's failure as a husband and a wife does not mean that they cannot be good parents.

Excerpt 11:23

23H: I was mentioning to Deb that uhm ((PAUSE)) that both of us were ((PAUSE)) screwed up our marriage and uh

24W: Um hum

25H: I think that since things were done that were very ((PAUSE)) damaging or potentially damaging to the to the children failure of one party or the other but we're both responsible for those actions.

26W: Um hum

27H: And uh ((PAUSE)) I think you're more comfortable with the ((PAUSE)) separation and ((PAUSE)) and divorce and ((PAUSE)) probably don't feel as

pressured on many other hand ((PAUSE)) I really feel that I my relationship
with with the children is not what it should be as the other parent with four days
a month ((PAUSE)) and I don't think either of us are out of the woods yet as to
((PAUSE)) recovering from our relationship and (((PAUSE)) the effect it has
on the children. And I think if we would ((PAUSE)) share the children ah
((PAUSE)) then I think both of us would be healthier ((PAUSE)) growing into
this this second chance like they talk about in the film. ((PAUSE)) And ah
((PAUSE)) probably wouldn't need to get involved in in these other legal
matters. And they could grow out of (this thing).

28   ((PAUSE))

29M: Let me ah clarify a couple of points that ah Rich has made [(   )

30W: [Uh huh=

31M: '=You use the term you're not we're not out of the woods yet? Out of the

32H: Yeah=

33M: =yeah and I'd like to say that I think that's the very uhm ta uhm ((PAUSE))
        good observation today because uh many parents when they're involved in this
        stage of looking for the solution uh, they're they're they're not ready objectively
        their judgment is a little bit little bit off their reason is a little bit off and
        sometimes uh they may uhm ((PAUSE)) uhm do things that may not be in the
        long run the best for their children, uh, so I think that what I hear Rich saying is
        that he wants to recommend something that uh ((PAUSE)) will develop will
        help everybody

34H: Here's will help everybody what's right for the children especially in if it's right

for them it'll be right for Jen and I

35M: Uh huh

36H: We uh both were the bad quote unquote husband and wife (   ) ((PAUSE))

and uh ((PAUSE)) those ((PAUSE)) those children have been exposed to

something wrong ((Close to tears))

37W: Um hu

38M: I think Rich also mentions another point that I think many parent many parties

(I missed) the word find it so difficult today is Rich and I think you have

already ((PAUSE)) seen the difference between not getting along as as

husband and wife but being good parents =

39W: =Um hum (   )

40W: [[I think its

41M: [[In many and many and many parties aren't do that, you're a good you're

you're a (   ) husband therefore you're a bad father and that's a (   ) in

itself. Rich you're saying that basically (   ) husbands and wives something

more (   ).

42W: Um hum

43M: I'd like to just emphasize that (quote)=

44W: =Um hum

45   ((PAUSE))

46H: The thing I'd like to try to work out today Jen would be something we could

carry throughout on a permanent basis ((PAUSE)) and I'm willing to

In the excerpt above, H states that H and W are responsible for the failure of their marriage (turn 23) and damaging actions toward their children (turn 25). Then, in turn 27, H makes a supposition that W might be "more comfortable with the separation and divorce" than he is. H is not satisfied with the arrangement according to which he can see the children only four times a month. He makes a point that sharing the children would be beneficial for the children and H and W themselves (e.g., "I think if we would share the children ah then I think both of us would be healthier growing into this this second chance like they talk about in the film. And ah probably wouldn't need to get involved in in these other legal matters. And they could grow out of (this thing)"). In turns 29, 31, and 33 M takes up the points H has made. M contrasts H's sensible approach with what most people do in the same situation, that is, their judgments are impaired, and they do not act in the best interests of their children. According to M, H, on the contrary, would like to "recommend something that uh … will help everybody". H's contribution in turn 34, where he assures that their primary concern is the children's best interests, supports M's statement (e.g., "what's right for the children especially in if it's right for them it'll be right for Jen and I"). In turn 38, H makes a point that H and W were bad husband and wife, and that could have had a negative effect on their children. In turns 38, 41, and 43, M makes reference to another point H has made earlier, that is, about the difference between being good parents and bad spouses and emphasizes the importance of understating that. Then the conversation shifts to discussing H's proposal (turn 46). W seems to get completely run over in this episode. M and H are in synch in establishing a motive for the conversation and how to have it but W does not get a word in edgewise in

this metacommentary on this discussion. Most of her contributions are "go ahead" tokens (e.g., "Uh huh" in turns 30 and "Um hum" in turns 24, 26, 37, 39, 42, and 44).

In this example, it is the husband who brings in the difference between the roles of parents and spouses into the discussion, although it is not done in a straightforward manner. The husband speaks about their specific situation, making a number of points such as the mutual responsibility for the failure of the marriage, a negative effect of their relationship on the children, still being in the process of recovery from this relationship, and a beneficial effect that sharing the children would have on everyone (turns 23, 25, and 27). The husband's moves could be a veiled request to change a currently unfavorable arrangement. It seems that the husband uses the parents' joint responsibility motive to portray his own reasonableness, and thus any objection by the wife would cast her as unreasonable. Many times the wife enters the mediation with an approved plan that favors her and by simply entering the discussion she already is in a position of having to concede. Any objections to H's suggestions may make her appear unreasonable. The mediator takes up some of the husband's points while leaving others out. For example, the matter of both parties contributing to the destruction of the marriage does not get developed whereas the current situation in terms of the relationship and the husband's proposal are taken up. The mediator refers to the husband's observation that the spouses are "not out of the woods yet" and elaborates on this point at a more general level, pointing out that many people in a similar situation do not have objective judgments and make decisions that are not in the best interests of their children (e.g., "they're … not ready objectively their judgment is a little bit little bit off their reason is a little bit off and sometimes uh they may … do things that may not be in the long run the best for their

children") . Using this common erroneous behavior as the background, the mediator

frames the husband's proposal as a constructive one (e.g, "I think that what I hear Rich

saying is that he wants to recommend something that uh will develop will help

everybody"). Thus, the mediator shifts focus from the negative aspects such as the

failure of the marriage, the detrimental effect on the children, and the issues in the current

relationship to a more promising and positive one, that is, the possibility to develop a

plan that would be helpful for everyone.

This shift is also connected with the orientation on future, which is typical for

mediation sessions. While the husband focuses on the past (e.g., "both of us were

screwed up our marriage", "things were done that were very damaging or potentially

damaging to the to the children"), the present ("I really feel that I my relationship with

with the children is not what it should be", "I don't think either of us are out of the woods

yet as to recovering from our relationship"), and future ("I think if we would share the

children ah then I think both of us would be healthier", "And ah probably wouldn't need

to get involved in in these other legal matters"), the mediator's orientation is on future ("I

hear Rich saying is that he wants to recommend something that uh will develop will help

everybody"). This difference in orientation is observed also later in the discussion when

the husband was bringing in the issues of being bad husband and wife and the children's

exposure to damaging things (turn 36), thus focusing on negative and past events. The

mediator makes a shift to a more positive aspect, that is, although the parties can have

issues as husband and wife, they still can be good parents. The mediator emphasizes the

difference between these two identities and things (duties) associated with them, making

it clear that they still can work successfully together in their capacity of parents, regardless of their relationship problems as husband and wife.

Similar to the examples in the previous section, the mediator uses parenthood as a resource to persuade the disputants to cooperate with each other. The mediator constructs the identities in the moment of interaction to foster their collaboration.

Parents as Colleagues

To further separate the identity of parent from problems the parties had as a husband and a wife, the mediator compares being a parent with having a kind of job. In the same way as colleagues do not have to like each other in order to perform their duties and accomplish their work, the parents' relationship with each other should not interfere with their job of raising their children. Excerpts 9:1 and 56:17 illustrate this point.

Excerpt 9:1 takes place at the beginning of the session. The mediator goes over the purpose of the meeting and makes a point that most people mistakenly think that if they failed as a couple, they will not be able to parent together. The mediator suggests that in order to succeed the parties should treat their parenting as a job.

Excerpt 9: 1

1M: Well okay we're here together for a purpose, uh, a very noble purpose, and the purpose is to try to uh, work out, an arrangement whereby, this little guy that's your kid, can have two parents, in his life, and hopefully having have you both in a way where you can really be parents where you can co-parent. Know there's an in- interesting um, thought that I'd like to leave you a lot of people have agreed to those difficulties, uh they believe that they couldn't stay married to each there's no way they could uh parent together. But I tell you that really isn't true.

Uh, it will depend on some people, don't seem to do it. I'm inclined to think it's because one or both won't rather than they that they can't. Because when you stop and think about it ((PAUSE)) But that doesn't mean you can't accomplish the job that you, have to do. You can work with a person you don't like, when you focus not on your personal relationship but on the job you have to do together. And I don't see that that needs to be any different, uh when people divorce and they have the job of raising a child or children together. They can focus their energies, only on the thing of being parents to the the child. ((PAUSE)) When you personalize it, you're apt to get in trouble. That's why often uh people come in here and they tend to, be upset with things that have happened in the past and I understand that, I certainly have every, right to reason to have been through a divorce myself so I do understand when when people have a have a kind of a upheaval. But the point is that, you really don't have to go through that nonsense any more, it's over. You've made your decision. There's no point in rehashing what has now become a historical fact and can't be changed.

2W: Right

3M: So you focus on something that is that is, I assume from talking to both of you realy important to you and that is your son, and so you try to give him the best shake you can. And that's that's our job here today. ((PAUSE)) Now it sounds to me, through talking to you in- individually, as though you have done a lot of talking about it and you know pretty well what you want. Why don't we start talkin' uh start on this by your telling me, um, the essence of what it is you you think you've decided upon.

In the opening speech M explains that the parties are attending the session to work out an arrangement for their son in such a way that both parents would be involved in the child's life and would be able to co-parent. M shares his observations and thoughts on why many couples do not succeed in raising their children together after the separation and what can be done to avoid that. M points out, the problem is that many people believe that if they could not stay in their marriage they cannot function as parents together, too. According to M, it is not true. M advocates the idea that people in such a situation should view parenting as a kind of job (e.g., "when people divorce and they have the job of raising a child or children together"). Their focus should be on the job they need to accomplish rather than on their personal relationship, and they do not have to like the person they work with in order to succeed in their task. M makes a point that it is important to leave their marriage in the past and focus on the current issues that require the solution, namely, developing the best possible arrangement for their son. M emphasizes again that this is exactly what they have to accomplish in the course of the session. This issue becomes the focus of further discussion.

In this example, the mediator sets a joint responsibility as an incentive to be reasonable. In contrast with the examples discusses earlier, M constructs the motive of joint obligations by framing parenting as doing a job. M does not just create a model of idealized parent the disputants should aspire to (i.e., acting in the interest of their child and the involvement of both parents in the child's life) as it was done in episodes 18:4 and 11:23. Here, the mediator provides the disputants with a way to do that by applying the conceptual metaphor of job to parenthood. The mediator compares parenting with having a job and co-parenting with working as colleagues. In this way, the mediator takes

away an emotional aspect of personal relationship and promotes task-oriented relations.

This approach to co-parenting as working together is necessary not only for the parties in

general, but for achieving the goal of this particular session. The mediator enforces this

orientation further in the discussion by making a point that this is the task that they (i.e.,

the parties and the mediator) are going to accomplish in the course of the session ("And

that's that's our job here today.").

Expert 56:17 takes place at the beginning of the session after discussing the

involvement of a three-year old child in the decision-making. The mediator's view is that

parents should not leave it to the child to decide with whom to stay but they should make

arrangements themselves. In the episode below, the mediator focuses on the issue of

parenting and compares it with having a job. The mediator points out that parents like

people at work do not have to like each other but trust between ex-spouses is the essential

part of this process.

Excerpt 56: 17

17M: Well I'm I think what I'm saying to you is let's look at it, because and I think you

know uh just making the quick decision of the way it's going to be is not, not

enough. Because in the first place, uh when you are at the point where you are

and neither one of you really trusts the other. That's the bottom line of, of all the

people that I see here, they've come to the point where they don't trust each

other. So what we have to do if you're going to ever parent, this child

((PAUSE)) is to try to to help create that kind of situation which can gradually

build back some trust of each other ((PAUSE)) You don't have too I- to love

each other, to do that, fact of the matter is you don't even have to like each other

18H: Mmhm (   )

19M: See, people, people uh, who work, uh ((PAUSE)) very frequently have

        somebody around them that they don't like you know very well, yet if they learn

        how to to do their job together. You don't have to like each other in order to be,

        good parents working parents, together, for this child's best interest. But you do

        have to have a reasonable amount of trust that the other one is gonna do that

        they say they will do. ((PAUSE)) And then, if you both say you're interested

        and you love this child ((PAUSE)) they you will not hang on to uh selfish uh

        kinds of personal needs, you're going to do what is best for that child.

        ((PAUSE)) And what's best for that child is to have the two parents in her life.

        ((PAUSE)) How far are you living apart now.

In the excerpt above, M invites the parties to try to make some arrangements for their child in the course of the session. M states that the parties are right now at the stage when they do not trust each other, however it is important for parenting. M suggests that they should "create that kind of situation which can gradually build back some trust of each other" (turn 17), and s/he is going to assist the parties in that. M emphasizes that parents do not have to love or even like each other to do that. In turn 19, M brings in a situation at work that happens very often, namely, people can do their job regardless the fact that they do not like a person with whom they work together. M makes a point that, in a similar way, ex-spouses do not have to like each other to succeed in being good parents. Next, M revisits the ideas of the importance of trust and acting in the best interests of the child. Then M makes a shift in a dialogue activity and asks the parties for information on their place of living.

In this example, similar to excerpt 9:1, the mediator constructs the joint-obligations motive and brings to the forefront the identity of parent with emphasis on its businesslike nature (e.g., working parents). In this manner, the mediator shifts the relationship between the parties from a personal realm to a professional one. These different types of relationship have their specific features. Mutual fondness is more important for the former while task-orientation is for the latter. Thus, the mediator's moves are geared toward creating a working atmosphere that would facilitate keeping the parties on-task.

In this context, the identity of the parent is closely interwoven with the identity of the collaborator as to perform their parental duties successfully, participants have to work together. The way the mediator constructs this identity defines the preferable moves the disputants should make and what direction the interaction should take. Further, I will describe how mediators construct this identity and design a mediation session as a collaborative activity, which is an institutionally preferred mode of activity.

A Collaborative Activity

The mediator frames dispute resolution as a collaborative activity. The participants can be divorced or going through the separation, they can have incompatible personalities and interests, they can be in conflict with each other, but they have to act as a team to make the best possible arrangement for their children. One of the ways that the mediator employs to create an atmosphere of collaboration is to address the couple as a single unit (e.g.,*you*, *both of you*, *you two*, *yourselves*, *the two of you*). For example, in the following excerpt, the mediator asks the parties at the very beginning of the session if they both know what is the goal of the meeting.

Excerpt 34:1

M: **You two** know why you're here?

In another example (excerpt NR3:17), the mediator treats the participants as a unit. However, in this case, this unit was not productive in terms of settling the matter of child care, and they both are responsible for this.

Excerpt NR3:17

M: = I think we need to think of uh that more specifically rather than leaving it to

chance because **the two of you** haven't functioned very well by leaving it to

chance…

Being a unit does not guarantee success, though. The participants have to be clear about what is the point of their collaboration and what they need to achieve. In the opening speech, the mediator sets up a specific agenda for the parties (e.g., "the job before both of you is to work out some plan" and "(you could) write up an agreement, a plan, that you two have to come up with" (transcript NR3), "this is a first attempt just to try to get it resolved and ((PAUSE)) and, work out something that you think is best for your children" (transcript 50)), explain advantages of this collaboration (e.g., "I encourage you as much as possible to try and work things out here because then this will be an agreement that you two have devised" (transcript NR3), "if you're gonna work something out and you're gonna come up with some agreement I feel that that's gonna be much more meaningful to the both of you both of you if you work it out on your own" (transcript 61)). The mediator emphasizes that the parties are mutually in control of the outcome of the discussion and that they have to cooperate to achieve its goal. Similar to

the examples analyzed earlier, here the mediator constructs the grounds for collaboration in terms of the child's interest and the advantage of resolving their conflict on their own.

Excerpt 37:5 is an example of how the mediator constructs the "advantage" motive for collaboration in terms of tangible resources. Here, the mediator explains why the participants are attending the mediation session and brings in the advantages of settling the matter on their own.

Excerpt 37:5

5M: … Prior to having that court hearing and hopefully to avoid any any uh court
        hearing. (   ) both of you can resolve this issue on your own by yourselves
        without having to go to court and spending your time emotional time financial
        time and so forth. It's very (expensive for you) so we try to help both of you.
        ((PAUSE)) Uh, what about yourselves?

Here, the mediator points out, that the mediation provides the participants with an opportunity to resolve their problem themselves and to avoid going to the court. The mediator stresses out that working together on their issue is advantageous for both participants as it will be less damaging for their financial situations and emotional states. The construction of the incentive to be reasonable in this example is different from the previous ones as it appeals to the practicality of collaboration in terms of preserving vital resources. Both parties are interested in resolving the situation with minimal losses. The way to do that is to cooperate in the course of the mediation session.

Excerpt 44:4 is another illustration of how the mediator focuses the participants on collaboration. In contrast with excerpt 37:5 where the focus is on the reason for working together, in this example the mediator stresses out what constitutes cooperation.

Excerpt 44:4

4M: Seems to me the ((PAUSE)) what needs to be done is, for the two of you to

((PAUSE)) share ((PAUSE)) more information with each other ((PAUSE)) so that

both of you would, (   ) Josh so that (   ) what Josh does, uh what

Josh's needs are and what he does, and uh when he's not with one or the other so

that (   ) we could build up some confidence…

In this example, the mediator brings in the issues of shared knowledge as an

important component of collaboration. The participants have to share information about

their son, about his needs and actions. This will help to create trust and confidence, which

is necessary for the team to function successfully. Similar to excerpt 9:1, the mediator

does not just craft a certain identity, that one of collaborator, but also gives the disputants

an idea of actions that are associated with effective collaboration and which the

disputants are expected to perform. Thus, in this excerpt the mediator is more

straightforward in pointing out preferable moves.

The examples discussed above show how the mediator shapes the disputants'

identities and uses them as a resource to foster collaboration and craft a preferred type of

interactivity. The next section will turn to the mediator's participation role.

Mediator as Part of Collaboration

Not only do mediators frame interaction as collaboration of the couple but also

they position themselves as part of this process using the pronoun *we* (e.g., "what we can

hope to accomplish by your being here", "let's see if we can try doing that, let's give it a

try", "if we can come up with some plan"). Excerpts 37:38 illustrate this aspect.

Excerpt 37:38

38M: So what we have here then is a custody fight?

39W: Uh huh

After the couple explained their situation, the mediator summarizes the reason for
their attending the session, namely, who is going to have custody of the children. By
using the pronoun *we*, the mediator frames this as an issue with which all the participants
of the session will have to deal.

Excerpt 33:164 is an example of how the mediator shifts his/her participation role
in the interaction.

Excerpt 33:164

164M: [Excuse me,   Lucille   excuse me please.   ] Okay w- we're not

         trying the case, I don't wanna hear any more arguments. All I wanna do now is

         see if there's anyway you two can agree to some sort of temporary plan

         because if you don't, then the court can help you with that.

165W: How can I agree to something with him when he'll run with the kids.

In this example, M tells the parties to stop having an argument as the mediation
session is not a trial, and the only thing M is interested in is to see whether the parties can
work out a temporary agreement (turn 164). W objects to M's point in turn 165, pointing
out that she cannot come to any agreement with her H as he is going to run away with
their children.

Of interest here is the dynamics of pronoun usage. The mediator extracts
himself/herself from the collectivity and aggregates into it through the use of the personal
pronouns. First, similar to example 37:38, the mediator uses *we* ("we're not trying the

case") to include every participant of the session in creating the process of mediation. Then, the mediator shifts to *I* ("I don't wanna hear", "All I wanna do now") and *you* ("if there's anyway you two can agree to some sort of temporary plan because if you don't, then the court can help you with that") to emphasize different roles and responsibilities of the participants. The mediator has authority to tell the parties what to do to ensure the accomplishing of the task at hand but it is the parties' responsibility to achieve the result. At the same time, the mediator disassociates himself/herself from the ongoing dialogue activity that is institutionally dispreferred, that is, having-an-argument.

Thus, the mediator tries to get the participants to understand that the institution of mediation provides them with a forum to deal with their issue in the ways that were impossible before but this means that they have to behave in an institutionally appropriate manner. For the purpose of the meeting they have to become a *we*, to focus on a certain agenda, and to cooperate in order to achieve the specific goal. The mediator frames the entire setting as collaboration and tries to maintain this focus on a collaborative activity and joint responsibility throughout the session. The mediators do this, on the one hand, by constructing the identity of the disputants as collaborators and, on the other one, by positioning themselves as part of this collaboration.

To sum up, in the course of sessions, mediators try to create a collaborative environment. They do this by bringing to the forefront certain identities of the participants that are appropriate for this institutional talk and more effective for achieving the goal of the interaction, namely, the identities of a parent and a collaborator. These identities are intertwined. Being a parent is associated with being a coworker. To do their job effectively, they have to work as a team, that is, to collaborate. The mediator

constructs different motives for the participants to be reasonable in the course of the interaction. These motives can be grouped into two categories, namely, joint obligations to the child's interest and the disputants' advantage in solving their problem on their own. These motives and identities imply preferable moves to be taken by the disputants. Thus, mediators use identities as a resource to control participation and the development of the discussion. Besides, mediators position themselves as part of the collaborative activity. To achieve this, mediators employ different resources (e.g., various references, personal pronouns). Next, I will discuss the findings in the context of the institutional order and the design.

<div align="center">*Discussion*</div>

Social Epistemology and Social Relations: Institutional Identities

In the course of interaction, certain identities of interlocutors become more prominent than others depending on the type of this interaction. In case of institutional talk, it is institutional or professional identities, among other institutional features, that make the talk institutional (Clayman, 1992; Drew & Heritage, 1992; Schegloff, 1992). During mediation sessions, a number of identities are made relevant and others irrelevant.

First of all, the identities of mediator and client come info forefront, which is predetermined by the context of the dispute itself. Here, the asymmetry in social epistemology and social relation is evident in terms of participation, knowledge, and interactional resources. Chapter 4 discussed different types of knowledge the mediator and the disputants bring into the discussion. While the mediator has more knowledge of institutional nature (e.g., knowledge about the mediation system and ways to resolve the dispute), the disputants have knowledge of a more personal kind. As for the asymmetry in

participation, the mediator as a representative of the institution has a leading role in framing the discussion according to the institutional needs. The mediator tries to stay neutral in regard to the disputants, defines what roles the parties should acquire for this interaction, besides being clients, instructs, initiates activities, and intervenes when the parties go off-track. The disputants, in their turn, contribute to this asymmetry by following the mediator's lead. Speaking about institutional asymmetries and power relationship between participants on talk radio, Hutchby (1996) shows how this power is "expressed in discourse, through an unequal distribution and deployment of argumentative resources" (p. 58) (e.g., the asymmetry between the first and second positions in argument). The participants of mediation sessions also differ in their use of resources. Identity is one of the recourses the mediator employs to shape interactivity.

It was mentioned in Chapter 6 in relation to joint activities that interactants constantly negotiate what they are doing and what they are trying to achieve in the course of activity (Clark, 1996). They also negotiate what they are at the given moment. The mediator tries to put constraints on the development of interaction by labeling participants. The mediators' language use highlights available preferred categories of participants for the given activity. These are identities of parents and collaborators, which are tightly interconnected. The mediators start off the fact that the disputants are biological parents. As parents, they are obliged to act in the interests of their child and are entitled to being involved in the life of that child. The mediator uses the motives of parents' joint obligations and the advantage of solving their problem on their own to foster the collaboration. The mediator constructs the identity of parents not only as the ones who have responsibilities toward their children but also toward each other. Taking care of

children and making decisions based on their interests is only one, and, probably, most common, part of being a good parent. An important aspect of parenthood, as the mediator emphasizes, is to see parenting as a kind of job and treat each other as colleagues. The mediator's language use entails a particular framing of parents as colleagues in a problem-solving task. In this case, they are task-oriented rather than relationship-oriented. Co-workers' feelings toward each other, however negative they are, become of less importance when colleagues are pressured with a necessity to do a task. In the similar way, the couple is required to put aside their frustration with the husband-wife relationship and work together as a team to solve a problem. They need to act as collaborators to accomplish the task at hand. To enhance the level of cooperation, mediators position themselves as collaborators, too.

Here, it is possible to see the connection between social relations and social epistemology. The mediator constructs identities for the disputants, which puts them in a certain relationship with each other. Different identities imply different grounds for communicating and affect the epistemic quality of interaction. The identities open different opportunities for how the controversy will be pursued. Although motives for collaboration may vary, acting as collaborators presupposes certain moves to be taken by the disputants to resolve their problem (e. g, sharing information). When the disputants treat each other as the (ex)-husband and (ex)-wife who are in conflict, the epistemic quality of interaction regresses as they are likely to go off-task and have an argument, Thus, when the disputants shift to these roles, this is a signal for the mediator to intervene.

Identities and Communication Design

In the course of the mediation session, mediators' moves project "the types of contributions that will count as relevant, the roles participation should take up with each other, and opportunities for participants to refine commitments" (Aakhus, 2003, p. 283). In line with this idea, this study shows how mediators use parenthood and the identity of collaborators as a resource to persuade the disputants to work together and keep them on task. Mediators are doing some kind of identity work, which is part of their communication design work.

Participants' identities, whether they are institutionally relevant or not, are not static. They are always in flux. For example, mediators, when appropriate, act as part of the team. However, when it is necessary (e.g., when the parties go off-task), they distance themselves from disputants and shift to a more formal role of being a mediator. When disputants provide the mediator with necessary information, their identity of a client becomes more prominent; while in the course of having-an-argument the parties' adversarial identities of ex-husband and ex-wife come into play. Thus, the change in a dialogue activity is associated with the change in an identity. The identities in this respect are a kind of signal about the state of the activity that mediators use and respond to.

On the other hand, brining into forefront a certain identity can be helpful in creating activity that is more appropriate for the type of interaction. Thus, the mediator tries to suppress the identities that can be face threatening and detrimental to the institutional task (e.g., ex-spouses) and emphasizes the ones that help to keep the disputants focused on that task (e.g., collaborators). Although these institutionally relevant identities differ in certain aspects, the important point is that they are not in conflict with

each other. They complement one another and facilitate the process of deliberation.

Mediators' design work is evident, for example, in how they focus participants on the

identity of parent and its aspects at the very beginning of the session. This design work

differs from what was discussed in Chapter 6. There, design work manifested itself in

more explicit moves mediators make to bring interaction on track, while in this chapter it

is framing moves. The mediator frames an activity through highlighting preferred types of

identities.

Another important point that was emphasized in the previous chapters is that all

the participants are taking part in design work. Mediators use the resources that

participants offer to them in the course of interaction to construct the interactivity. This is

evident, for example, in excerpt 11:23, where the mediator incorporates the points one of

the participants made to create an appropriate form of interactivity. Taking up some points

and leaving others out, the mediator focuses the participants' attention on positive aspects

and orients them toward future.

Thus, activity and identity are interrelated. On the one hand, activity is constitutive

of the identity. On the other hand, it is possible to regulate the activity by making certain

identities relevant for interaction while discouraging others. Taking this into account, the

mediator as a designer makes moves to promote forms of interactivity preferred for

mediation talk and avoid those that can hinder the process of interaction. Some moves

mediators make (e.g., bringing the child's interest into interaction) may be considered

irrational and inappropriate by some mediation theorists (e. g., Keltner, 1987). However,

these moves may be pragmatically necessary and quite reasonable in the given context.

Mediators perform their job in less than ideal circumstances where participants face on-

going struggle over how they should interact with each other as there are multiple ways

how they can play with that. As Aakhus (2003) states, "The design goal is not so much to

create a particular ideal dialogue as it is to invent a way to interact that renders the

controversy amenable to talk and interactive reasoning" (Aakhus, 2003, p. 285). The work

of the mediator as a designer is to use what disputants and discursive system of the

mediation talk are capable of doing in the given circumstances to shape interactivity.

To conclude, this chapter examined mediator practices to shape an institutionally

preferred form of interactivity through highlighting institutionally preferred identities.

The data used for the study made it possible to see how mediators use identities as a

resource to put constraints on the development of the discussion and contribute to

creating a collaborative environment of the meeting.

The next chapter will sum up the main findings of the project and theoretical

implications of these findings for advancing our knowledge of the relationship of the

interaction order and the institutional order, communication design, and argumentation.

CHAPTER 9

CONCLUSION

The study discovered how deliberative activity is constructed within ongoing

social conflict. The specific focus was on the role of the mediator in mediation sessions

as an ostensible designer of communication activity. For this project, the main focus of

observation was on mediator communicative practices for keeping the mediation

participants on-task in the mediation session. These were observed by attending to the

word choices of mediators and their language actions evident across a corpus of

transcripts of mediation sessions, as well as linguistic and interactional resources

disputants provide in the course of interaction as the dialogue quality is a mutual

achievement of all the participants. The simple categories were useful for getting at high

order concepts such as topics and dialogue activities.

This chapter summarizes the limits and merits of the data, the main findings of the

study and the implications of these findings for current theory about the relationship of

the interaction order and the institutional order, communication design, and contemporary

argumentation.

Limits and Merits of the Data

An existing collection of 18 transcripts of audio recordings of naturally-occurring

mediation sessions served as interactional data for this study. These data have their

inherit limits and merits, which shaped the directions of the analyses. The limitation of

these transcripts is that some information is absent. First of all, there is a lack of

information on some aspects of interaction (e.g. most nonverbal actions), which limited

the analyses to participants' language behavior and interactional resources. These data,

however, made it possible to observe how the participants use these resources to construct the process of deliberation. Second, there is no information on what sessions each mediator conducted, which did not allow me to observe routine practices each mediator used to manage interaction and keep participants on-task. Of interest for analyses, however, was general and recurrent features of mediator practices for shaping an institutionally preferred form of interactivity. These data was sufficient for discovering them.

An inherit merit of the given data is that they provide an opportunity to observe communication practices as they happen in naturally-occurring interaction. The advantage of studying participants' actions in naturally-occurring interaction is that it is possible to see how participants shape the process of deliberation on the fly in the less than ideal conditions. These data provide insight into how participants coordinate their actions in the circumstances of constraints of the interaction order and institutional order, how they create interactional possibilities for disagreement and strategic maneuvering, and how these possibilities are taken to reason.

Summary of Findings

The chapters of analyses conceptually and methodologically build upon each other. They discovered different practices mediators use to shape an institutionally preferred interactivity. First, Chapters 4-6 established what is on-task and off-task in the course of mediation sessions. Chapter 4 started with very basic material used to create on-task, that is, references participants make. These basic elements are essential but not sufficient for creating an on-task mode of interaction. References contribute to building discussion themes, so Chapter 5 looked at the on-task/off-task modes at the level of

topics. The study of topics advances understanding of how the institutionally preferred interactivity is constructed. The mutual orientation to the subject of talk, however, does not solely guarantee that participants are on-task. It is important to look into how participants talk about their issues. Thus, Chapter 6 brings the analysis of on-task/off-task at yet another level, which is dialogue activities. Chapter 7 logically follows Chapters 4-6 in that it focuses specifically on what mediators do when the interaction goes off-task. Chapter 8, in its turn, contributes to understanding how mediators shape mediation activity by making prominent institutionally preferred identities.

The study makes a number of claims. First, an institutionally preferred form of interactivity is constructed through the use of references, topics, dialogue activities, and situated identities. Second, all the participants produce mediation activity; however, the mediator acts as a major designer of interaction. References mediators make, topics and dialogue activities they launch are design moves they make to shape the deliberation process. Finally, argument and reasoning are embedded in and constituted through interaction that imposes various constraints on what contributions are appropriate in mediation talk.

The following sections will report findings on on-task/off-task modes of mediation activity, practices of topic and dialogue activity management, and shaping mediation activity through identities.

On-task/Off-task Modes

Chapters 4-6 examined how references participants make to different matters, topics participants bring into the discussion, and dialogue activities the participants engage in contribute to creating on-task/off-task mode of the mediation session with the

purpose of understanding how the interactivity in the course of mediation sessions is constructed. Each chapter builds on the previous one and leads to getting deeper insight into this puzzle.

Chapter 4 discovered that a very basic and explicit interactional material, namely, references participants make in the course of the mediation sessions served as an indicator of whether the mediation session is on-task or off-task and were used to construct on-task/off-task modes of talk. There were several kinds of references that played an important role; this included: 1) references to the interactional products to be created during the mediation session (e.g., an agreement), 2) references to people who are not present at the session but can contribute to the process of dispute resolution (e.g., judge, attorneys), who are the primary target of the decision-making (i. e., children), or who serve as an example of possible ways to solve a problem (e.g., former clients), and 3) references to external matters related to the agenda of the meeting (e.g. references to custody and visitation matters). These references show the participants' focus on the matter at hand and are employed by the mediator to bring the interaction back on track. However, these references should not be regarded in isolation. It is important to take into consideration their surroundings and what they create in combination.

The chapter found that there are differences in how the mediator and the disputants employ references. For example, the mediator is the one who most frequently makes references to the interactional product and agents of organizations who are directly related to the process of dispute resolution (i.e., the judge, the attorney, the psychiatrist, the mediator). The disputants tend to bring into the discussion the references to people they know (e.g., their family members or friends) while mediators often make references of

more abstract nature (e.g., hypothetical parents, children, or people who seek to solve custody and visitation issues in general). When the mediator brings in references to children into interaction, it is task-related, while the disputants' use of these references is not necessarily task-oriented.

Chapter 5 found that some topics contribute to the on-task mode of the mediation sessions while others lead the interaction off-track. It showed that on-task topics are design moves as they highlight the preferred form of interactivity. Mediators mark topics as on-task or off-task in reference to the conciliation court setting and goals. On-task topics are related to the organizational goals of the encounter and are grouped into the following categories: visitation issues, custody issues, collaboration of the parties, ways to deal with the situation, relationship issues, personal information, a mediation session, technical matters, agreement, interaction process during the mediation session, children's interests, the parties' behavior and character features, children's behavior and personality, and financial issues. These types of topics are relevant to the task at hand as they cover different aspects of dispute resolution. For example, the categories *visitation issues*, *custody issues*, *agreement*, and *children's interests* contribute to the on-task mode as they are centered around working out some agreement on visitation and/or custody arrangements for children. Other categories are relevant to the institutional goal of interaction as they touch upon the necessary conditions and ways to resolve the dispute, things that can hinder this process, the technical side of this process, and information about the involved parties that is relevant to the process.

Off-task topics are the ones that revolve around the parties' negative behavior, financial issues, court process, parties' interests, and private matters, with the category

parties' negative behavior prevailing. These types of topics are off-task as they do not contribute to achieving the goal of dispute mediation because they are emotionally-loaded and have potential for provoking a quarrel (e.g., the parties' negative behavior), improper for the mediation session as they cannot be resolved in conciliation court (e.g., financial issues), or irrelevant to the parties' dispute (e.g., private matters).

Chapter 6 discovered what dialogue activities unfolding in the course of mediation sessions contribute to creating an institutionally preferred form of interactivity and what dialogue activities shape an off-task mode. The official, on-task mediation activity is accomplished through different mediator preferred dialogue activities, such as information gathering, negotiation, asking for clarification among others. On-task dialogue activities include three categories: those that orient to the process of dispute resolution in the immediate setting (e.g., information seeking, clarification, and negotiation), those that situate things outside of the session and orient to the progress of the case in future (e.g., recommendation giving and recommendation seeking), and those that focus on maintaining the mediation process (e.g., instructing, inviting, apologizing, and praising). There are two types of dialogue activities that are treated as off-task. The first category are the ones that are treated as improper for mediation sessions per se (i.e., having-an-argument). In the prototypical case of having-an-argument the disputants would hit each other verbally and focus primarily on the character of the other party. In more subtle cases, the opposition would not be so obvious. In those cases the disputants would be having-an-argument in the process of making-an-argument about who is right or wrong. The making of arguments is done in such a way that it undermines the image of the opponent and treats the mediator as a judge. The disputants would make assertions,

often addressed to the mediator, about the other disputant's character or actions. The second category includes dialogue activities that are not necessarily inappropriate in their nature for this institutional talk but ill-timed. That is, one of the disputants may initiate a new institutionally appropriate dialogue activity while another one is still in progress. An example of this would be a disputant's attempt to launch a discussion of a proposal while the mediator is updating the parties on the current state of affairs. Discussing a proposal is legitimate in the course of the mediation session but it is treated as off-task at the given moment due to its untimely initiation. In other words, it has a temporary off-task status. This type of off-task dialogue activities does not present as much threat as improper off-task dialogue activities as the violation is rather procedural and does not jeopardize the institutional goal of the encounter. In contrast to having-an-argument, the off-task nature of ill-timed dialogue activities is more obvious, and the mediator terminates them at an early stage.

Chapter 6 showed that ways people reason and the ways interaction unfolds are interconnected. The mediator tries to design interactivity that enables disputants to deliberate. Disputants, however, may pursue controversy in a different way. For example, their contributions may construct cross-examination and treat the mediator as the judge.

Chapters 4-6 found that what becomes on-task or off-task is negotiated and constructed as the interaction unfolds. For example, some topics (e.g., visitation issues) stay appropriate throughout the whole session, whereas others can be treated as relevant in some cases and questioned in others (e.g., finacial matters). The appropriateness of topics depends on several factors such as who is the initiator of the topic and whether it has a potential for the constructive development of the discussion. The format of the

mediation sessions provides an opportunity for topical flexibility as there are no strict

rules but rather guidelines for what is appropriate to discuss. At the same time, topic is

emergent and mediators deal with it as it unfolds in the real time. It can be also illustrated

by instances of untimely dialogue activities. Disputants may initiate a shift to an

institutionally appropriate dialogue activity but it can be treated as off-task by the

mediator if it is ill-timed. The participants negotiate a temporal off-task character of the

dialogue activity and may resume it later on in the course of the session, granting it an

on-task status.

Chapters 4-6 reported findings on what constitutes an on-task mode of the

mediation session and what is considered to be off-task and how interactivity is

constructed through the use of references, topics, and dialogue activities. The mediator

uses these resources to shape the deliberation process and to constrain what becomes

arguable. The analyses showed that what is on-task or off-task is produced, not given.

What is institutionally relevant is revealed through the participants' orientation toward

what is going on in the course of interaction and worked out as the interaction unfolds.

Chapter 7, in its turn discovered mediator practices to bring the interaction back on track

when disputants go off-task.

Practice of Topic and Dialogue Activity Management

Chapter 7 found that mediators use different types of intervention to keep the

interaction on-task and that the general principle that underlies interventions is the

mediator's orientation toward the disputants' face. Practices are in principle available to

everyone in the mediation interaction but they are used in different ways by the mediator

and the disputants. While there is mutual orientation toward institutionally preferred

activity, which is evident in the on-task referring practices, topics, and dialogue activities, mediators use these resources to keep the disputants on track and to gear them toward reaching an agreement.

When disputants go off-task, mediators employ interventions that vary in directness and depend on the local turn-by-turn context. The study found that interventions were of two types, namely, on-record and off-record interventions, depending on whether interventions include a straightforward message to terminate an off-task topic or dialogue activity or not. On-record interventions are mediators' contributions where they specifically point out matters participants should not talk about or a dialogue activity that the disputants should not engage in. These include mediator-centered interventions, parties-centered interventions, session-centered interventions, and non-centered interventions. On-record interventions differ in terms of types of accounts the mediator provides to terminate an off-task topic or dialogue activity or lack of them. Off-record interventions are mediators' moves to bring interaction back on track in an indirect manner without pointing out that disputants have gone off-task. These consist of such subtypes as ignoring a topic, making a shift by initiating a new topic, summoning, and reformulating.

Interventions vary in the degree of threat they present to the parties' face. For example, mediator-centered interventions framed as the mediator's personal unwillingness to deal with some issues are more face-threatening moves as they do not express concern for disputants' wants (i.e., a threat to their positive face) and/or impose on them (i.e., a threat to their negative face). The threat is mitigated by the power factor as the mediator acts in the capacity of an agent of conciliation court and exercises interactional power in

the course of a meeting. Session-centered interventions present less threat to disputants' face as mediators' accounts for terminating the development of off-task topics and dialogue activities invoke institutional constraints (e.g., the impossibility of resolving an issue in the course of the mediation session) rather than personal ones. Off-record interventions, in their turn, are least face-threatening as they do not challenge the inappropriateness of disputants' actions overtly (i.e., minimal threat to their positive face) and/or impose minimally on disputants (i.e., minimal threat to their negative face).

Another finding was that the kind of intervention depends on what materials are available to the mediator in a local context, which is evident in how mediators frame their accounts to stop the development of an off-task topic or dialogue activity. For example, mediators can dismiss discussions on certain topics (e. g., financial issues) on the grounds of their inability to solve the problem or their lack of knowledge, while interventions to terminate discussions on the party's negative behavior in the past can be constructed in terms of lack of interest.

It was discovered that topics serve as a resource for bringing interaction back on track. While off-task topics lead to digression in an activity, the mediator uses on-task topics to make a shift to an institutionally preferred form of interactivity.

Thus, mediators construct their interventions in such a way as to balance concerns for face and keep the interaction on task. For that, mediators use local resources available to them in the interaction. Mediators' interventions open and close possibilities for the development of interaction and shape disagreement space of the discussion.

Mediation Activity

Chapter 8 examined the relationship between social roles and social epistemology in interaction. The specific interest was how the mediator's uses of language construct certain identities for the participants and how that shapes interactional possibilities. The analysis of mediators' references and moves found that mediators use identities as a resource to control participation and the development of the discussion and contribute to creating a collaborative environment that enables disputants to talk about problems in a more productive manner.

How the activity is structured depends on participants' identities. The study discovered that in the course of sessions, mediators' actions contribute to the formulation of an institutionally preferred type of interactivity by making prominent situated identities of disputants appropriate to institutional talk and more effective for achieving the goal of the interaction. These are the identities of a parent and a collaborator. These identities are interconnected. Being a parent is associated with being a coworker. To succeed in their job, they have to work together as a team, that is, to collaborate. Chapter 8 found that the mediator constructs different motives for participants to be reasonable in the course of the interaction. These motives are *joint obligations to the child's interest* and *the advantage to the disputants in solving their problem on their own*. These motives and identities imply preferable moves to be taken by the disputants. Thus, the mediator puts constraints on interaction and highlights the way the controversy should be pursued.

Chapter 8 discovered that mediators themselves act in different capacities. They foster collaboration by positioning themselves as part of this process and part of the group. At the same time, they act as an agent of the conciliation court to ensure the

quality of interaction. They make shifts between aggregating themselves into the collectivity and distancing themselves from the disputants depending on whether they are operating in on-task or off-task modes. To achieve this, mediators employ different resources (e.g., various references, personal pronouns).

Theoretical Implications

The study addressed three main practical problems. First, it revealed how an institutionally preferred form of interactivity is constructed in the course of the mediation session to enable participants to deliberate. Second, it discovered how the mediator as a designer of interaction contributes to this process. Finally, it showed how argument and reasoning are embedded in and constituted through interaction. The findings of the study provided grounds for theoretical reflections on the interaction order and the institutional order, social epistemology of interaction and institutional argument, and communication design.

Interaction Order and the Institutional Order

Dispute mediation provides disputants with an arena that enables them to manage their conflict through deliberation. As a non-authoritative way to deal with disputants' disagreement, dispute mediation is more informal than other institutional ways of resolving disputes, which presents a dilemma for participants, especially the mediator who takes on responsibility to ensure the quality of interaction. The dilemma that participants face is that they have to orient to the constraints imposed on interaction by the need for a presentational self to be achieved and maintained while also orienting to the institutional goal for interaction. This is a tension between the interaction order and the institutional order.

Mediators' moves are tailored to sustain the interaction order and the institutional order. In the course of mediation sessions, mediators have to balance the concerns for face and the quality of dispute mediation. Mediators construct their moves in the way that would keep disputants in the frame of the mediation talk and would not threaten their face at the same time. It does not mean, however, that mediators are outside of the process as they must orient to the constraints of presenting a self as well. Moves mediators perform can be preventive in their nature, for example, when mediators set up the agenda for the session, introduce topics for the discussion and dialogue activities to engage in, highlight preferred identities for the participants for the given interaction. By doing that, mediators focus disputants on the task at hand and reduce opportunities for violating the interaction order. The situation gets complicated when the disputants go off-task and the institutional order (and possibly the interaction order) gets disrupted, which requires the mediator to perform interventive moves. Letting the dispute go breaches not only the institutional order but presents a threat to the disputants' face. At the same time, trying to repair the institutional order and enforce the disputants to interact in an institutionally preferred way carries face risk, too. The mediator manages topic and dialogue activity violations in different ways, from indicating directly what topics and dialogue activities are inappropriate to terminating their development in an off-record manner. Mediators' orientation toward the disputants' face in constructing their interventions is indicative of their attempt to repair the institutional order with as little as possible damage for the interaction order.

Going off-task is evidence of tensions between the interaction order and the institutional order that emerge due to a struggle over what role is being played out, and

thus, what kind of actions are acceptable and different interactional goals the participants have in the course of the encounter. These tensions are revealed in the ways participants shape interactivity through reference usage, topics and dialogue activities, and situated identities they take on. Mediators orient toward the institutional goal for the interaction, which is to create arrangements for children through their talk. While disputants show this orientation, too, contributions they make indicate that they may also pursue their personal agenda such as creating a positive image of themselves and undermining the image of their ex-spouse.

 At the same time an off-task mode of interaction can be evidence of orientation to different institutional goals and struggle between different forms of institutional talk participants shape, whether it is the result of assumptions about the nature and format of mediation talk or a response to emergent problems in the course of interaction. This is evident in how disputants treat dispute mediation as a trial and the mediator as a judge. Thus, their actions shape the interaction differently than the institutionally preferred form the mediator pursues.

The way participants, mediators in particular, deal with the constraints of the interaction order and the institutional order and signal on-task/off-task behavior uncover grounds for commenting on social epistemology of interaction and explaining some gaps in contemporary argumentation theory, which will be discussed next.

Social Epistemology of Interaction

The social epistemology and social relations dimension is an important aspect of mediation talk. However, the primary focus of the previous research on mediation talk was on its structural organization (e.g., Cobb & Rifkin, 1991; Donohue, 1991; Garcia,

1991; Greatbatch & Dingwall, 1991), and social epistemology has not been paid due attention so far, except the work done by Jacobs and Aakhus (Aakhus, 2003; Jacobs & Aakhus, 2002a, 2002b). Jacobs and Aakhus' research complement the work of conversation analysts by looking into problems of constructing particular forms of reasonableness through various procedures and tactics. Following this line of research, the present study advances our knowledge of social epistemology of dispute mediation and its connection to the micro level of interaction. As Drew and Heritage (1992) point out, the social epistemology and social relations dimension of institutional talk manifest itself in various ways. It can be professional cautiousness in interaction (e.g., Clayman, 1992), interactional asymmetries in terms of knowledge, participation, and conversational resources (Drew & Heritage, 1992), or joint ways of reasoning (Levinson, 1992).

The present study shows how social epistemology and social relations dimension is revealed in mediation talk in the interactional asymmetries and the ways of reasoning. These two features of social epistemology and social relations are linked to each other.

Interactional asymmetries are evident in the references participants make, topics and dialogue activities they initiate, situated identities they take on, and the ways they manage the talk and shape interactivity. For example, references participants make in the course of mediation talk are indicative of asymmetry in terms of knowledge they have. References mediators make are evidence that mediators (e.g., references to agents of organization) have more knowledge of institutional nature, that is, knowledge about the mediation system and alternatives ways to resolve the dispute. Disputants' references (e.g., friends, family members) signal that they have knowledge of a more personal kind that is related to their case. Asymmetries in terms of participation roles and interactional

power are evident, for example, in mediator practices to gear the discussion in the institutionally preferred direction (e.g., by initiating on-task topic and dialogue activities).

The asymmetry in interactional power can contribute to the discussion going off-task. This happens, for example, when the mediator makes an attempt to terminate the topic initiated by one of the disputants and, at the same time, asks questions on the subject matter. The latter gives disputants an opportunity to develop the topic, which leads the discussion off-track.

The specificity of mediation talk is that this asymmetry is not static. Due to the non-authoritative and flexible format of the mediation talk where the mediator does not have a formal power, the disputants have opportunities to disregard the mediator's status and pursue their own agenda. It can be seen in those instances when the parties bring in off-task topics and initiate off-task dialogue activities.

What is important is that interactional asymmetries are related to how participants pursue dispute controversy. The way mediation talk is organized at a micro level is related to the way of practical reasoning. Moves the interactants make build on each other and contribute to creating a specific form of interactivity out of many possible forms. Different formats of interaction participants create enable different types of reasoning. The way the interactivity is shaped in the course of mediation sessions is consequential for constructing institutional argument, which will be discussed next.

Institutional Argument

The recent research in the area of argumentation has shifted focus on the role of discourse in understanding reasonableness and point out that reasoning is procedural (e.g., Eemeren & Houtlosser, 2005; Walton, 1998, 2000). However, this research tends to

be normative in that scholars develop models and procedures for how the process of argumentation is supposed to unfold in ideal circumstances. Another problem is that these models treat an argument as a primary activity. The research on conversational argument contributed to advancing our knowledge of how social epistemology is embedded in talk and the role of argument in naturally-occurring interaction (e.g., Jacobs & Jackson, 2006). It introduced the concept of disagreement space that is crucial for understanding the organization and conduct of conversational argument. The recent work has developed the idea of disagreement space as an object of design (Aakhus, 2003; Jacobs & Aakhus, 2002a, 2002b), which will be discussed in the next section. However, there are gaps in understanding how reasonableness is shaped on the fly in view of interactional and institutional constraints and tension between the interaction and the institutional orders. Another issue that stays less addressed is how participants of institutional talk manage disagreement space and employ the resources of disagreement space to construct the process of deliberation.

This study advances the answers to these questions. It provides an opportunity to see how the argumentation process unfolds in non-ideal conditions in the institutional context and advances our understanding of argument as an interactive accomplishment and an outgrowth of interaction. The study shows how basic features of organizing the interaction are consequential for argumentation. It expands on the view of normative theory that reasoning is procedural and complements it by advancing the idea that reasoning is interactive process. The study extended normative pragmatics in terms of showing how modes of reasoning are constructed through interaction, not just the propositional content of messages.

Developing the normative model of deliberation, Walton et al. (2010) suggest that deliberation is a collaborative type of dialogue. Participants engage in the deliberation type of dialogue, when there is need to choose between alternative courses of action. In this type of dialogue, participants are not committed to any course of action at the beginning of the discussion and their actions are steered to a collective goal of the interaction. The model of deliberation dialogue describes how participants ideally should act to solve a problem. The analysis of dispute mediation complements this line of work and shows how the process of deliberation unfolds in practice. While some features of deliberation dialogue are true for dispute mediation, others are more problematic. For example, the initial situation of dispute mediation is the need to find the optimal solution to the problem out of different possible courses of action, which is similar to the initial situation of the deliberation type of dialogue. However, as the analysis shows, disputants do not enter dispute mediation without any commitments to what would be the preferred outcome for the meeting, which presents a challenge for the mediator. While Walton et al. rightly point out that deliberation involves collaboration of all the participants, the analysis shows that it is often the mediator who tries to shape interaction as a collaborative activity, whereas disputants do not necessarily follow this direction, which brings us to the relation between ways of reasoning and ways of interacting.

Reasoning is embedded in activity. The actions participants perform to create a certain type of interactivity are related to the epistemic quality of that activity. Reasoning is different depending on whether participants treat a mediation session as an arena for talking about the past, establishing the truth about who is right or wrong and assigning blame and responsibilities and act in capacity of people in conflict, which disputants

often do, or they shape a mediation encounter as oriented toward future and problem-solving and act as collaborators. In the former case, they shape an interactivity that is similar to cross-examination in the court or engage in a primitive argument; they reason against each other. In the latter case, participants engage in the process of deliberation and make arguments to plan and negotiate arrangements for the children; they reason together to find a solution.

All the things participants bring into interaction, moves they make contribute to creating disagreement space, which is dynamic and can expand enormously. The study by Aakhus and Vasilyeva (2008) on managing disagreement space in multiparty deliberation over a plan for a housing development in a community found that disagreement is expanded through sub-dialogues over different aspects the opening speech of the meeting related to making a proposal. This expansion was managed in three ways. First of all, the participants oriented toward the opening speech as a proposal and raised their doubts and disagreements on what was said in that speech. Second, the community members did not frame the interaction as making and entertaining a proposal. Finally, during the meeting the opening speech was re-framed as an incomplete proposal. The way the participants shaped their interactivity allowed them to have a discussion over a proposal without commitments and obligations that come with it. In line with this research, the present study expands our understanding of how a disagreement space develops in the context of dispute mediation, where a third-party has to ensure the quality of interaction. For example, every topic that participants initiate in the course of mediation sessions has a potential for argument to emerge, although some of them (e.g., controversial or emotionally-charged ones) are more likely to have detrimental consequences. However,

what is made arguable and what strategies and resources participants use in the process of

argumentation are constrained by interaction process and institutions, that is by the

interactional order (e.g., face concern) and the institutional order (e.g., what moves are

appropriate for the given institutional talk). The mediator as an agent of conciliation

court plays an active part in shaping a specific disagreement space and, to a certain

degree, controls what can become arguable. How the mediator accomplishes that can be

viewed in terms of strategic argumentation.

The study contributes to further understanding of strategic argumentation in an

institutional context. It expands the idea of strategic maneuvering beyond two-party

argumentative discussion. The study shows how this concept is applied to those who are

not principals of dispute but who take on a responsibility for the quality of interaction. In

a two-party argumentative discussion, arguers engage in strategic maneuvering to balance

the goal of the discussion and their own needs. In a mediation encounter, disputants, who

are principal arguers, act strategically to balance the institutional goal of the meeting and

their personal agenda. The mediator's strategic maneuvering is different as it orients

toward the institutional goal and the quality of interaction. They use routine institutional

practices to keep the disputants on task to constrain what becomes arguable. The concept

of strategic maneuvering is usually related to traditional argumentative moves. The work

that the mediator performs goes beyond that. Mediators' strategic maneuvering manifests

itself not just at the levels of presentational device (e.g., references and interventions they

make), topical potential (e.g., topics they initiate), or audience demand (e.g., taking into

consideration face concerns in framing interventions). The dialogue activities themselves

that the mediator initiate and encourage are strategic moves of a higher level. With help

of all these resources, mediators are doing persuasion about the nature of the given activity. They structure dialogue in such a way that disputants would be able to make contributions to shape deliberation. For example, different identities open different opportunities for pursuing controversy and affect the epistemic quality of interaction. By putting participants in a certain relationship (i.e., parents and colleagues), the mediator emphasizes a task-oriented mood of the activity and promotes collaboration between them.

Basically, the work that mediators do is designing an institutionally preferred interactivity through shaping and managing a disagreement space. They engage simultaneously in shaping an object of design and a process of design. The implications of the present study for communication design are the focus of the next section.

Communication Design

According to the constitutive view of communication, interaction has its own properties and norms, and ordinary communicators use knowledge and principles of interaction to mutually create the reality. This provides a starting point for understanding communication as communication design enterprise. Design is natural as things naturally emerge from interaction (Aakhus, 2007). At the same time communicators can exploit the materials that interaction provides to change it to achieve certain ends. Deliberate design is an extension of natural expect of design. In this respect, design stance on communication is getting at the instrumental dimension of communication within the constitutive view.

Developing the idea of communication as design, Aakhus (2007) points out that, from a design stance, a central puzzle communicators face is how to make

communication that was once difficult possible. This idea is reflected, for example, in the work by Aakhus and Jackson's (2005) on seven things that designers of interaction should know (i.e., turn-taking formats, participant identity and face, commitments and the way they are formulated, the expandability of act sequences, the role of repair in the coordination of actions, consequences of design stemming from the interaction itself, and culturally shared assumptions of what constitutes appropriate communicative actions) and Aakhus's (1999, 2003) research on discourse design in managing policy controversy and the mediator's use of the language to reconstruct an argumentative resource. In the tradition of the design perspective this study has shown how normative pragmatics can be concerned with the invention of strategies, techniques, and procedures that create a form of communication that was otherwise difficult in the context of dispute mediation. It has advanced our understanding how the mediator as a designer of interaction uses various linguistic and interactional resources to shape a specific form of interactivity with help of disputants. The study has also shown how disagreement space while an animator of conflict is also an object of design that is dealt with through various language practices that exploit natural features of interaction.

Disputants go to conciliation court as they cannot resolve their problems on their own due to their inability to have an interaction of quality. When they enter dispute mediation they outsource responsibilities for how the interaction unfolds to the mediator. The mediator acts as a designer who crafts a designing system to create a specific product. The mediator's moves contribute to generating an activity that gets the parties through to the outcome. To produce the institutionally defined outcome, the mediator makes design moves to formulate a specific form of interactivity that is preferred for the

conciliation court. They have to take into consideration the constraints that the specificity of the interactional product puts on interaction and possibilities it provides and maintain the on-task mode of interaction through the resources that are available in the interaction. They keep the participants on-task or bring them back on track through the use of references and interventions, advancing certain topics and dialogue activities, and promoting institutionally appropriate identities.

These resources serve as affordances of discussion. Focusing on communicative affordances of technological forms, Hutchby (2001) points out that different technological artifacts or forms afford different possibilities for action. This idea can be applicable for interaction. The unfolding interaction provides *affordances* that can be exploited or that may be blocking the discussion without anyone noticing that. For example, topic can be considered as a kind of affordance of discussion. It grounds the material for discussion. Thus, constructing topics influences the affordance of the discussion. It can constrain the participants' actions, on the one hand, and create opportunities for them, on the other one. For example, the mediator uses on-task topics in off-record interventions to bring the discussion back on track. Another example of affordances is an identity. On the one hand, activity is constitutive of the identity. On the other hand, it is possible to regulate the activity by making certain identities more or less relevant for interaction while discouraging others. Taking this into account, the mediator as a designer makes moves to promote types of identity preferred for mediation talk and avoid those that can hinder the process of interaction. Mediators invoke and reinforce these identities by means of references they bring into interaction and moves they make.

These findings intersect with ideas about communication design and the instrumental possibilities within the constitutive nature of communication.

An important point about mediators is that they deal with a double-design problem (Schon & Rein, 1994), that is, participants have to create a product and craft a designing system at the same time. This designing system is constantly evolving as disputants bring in their own interests into interaction, and mediators act as designers in the situation. Mediators have to adapt to the situation, which is evident, for example, in mediators' usage of references or different interventions when disputants go off-task. In terms of references, mediators' moves would be geared to changing the trajectory of interaction by connecting the desired product (i.e., plan) with the designing system (i.e., participants) and the situation and associating an undesired matter (e.g., financial issues) with actors outside of the immediate situation (e.g., agents of organization). Mediators would change from less face-threatening to more face-threatening types of intervention if the former do not work and disputants persist in their resistance to end an off-task topic or dialogue activity.

The double-design is related to the idea that communication design is a collaborative act; all the interactants are taking part in constructing the talk; they are co-designing the interaction. The mediator makes moves to change the trajectory of the discussion depending on the disputants' actions and subject matter. The mediator uses the local resources, that is, what the parties make available in the course of the interaction, to shape the discussion. This is evident, for example, in various forms of mediators' interventions depending on the subject matter of the discussion. Different off-task topics disputants initiate provide the mediator with the material to give different accounts for

terminating the development of this topic. Also, a multi-party interaction gives the mediator a certain advantage. In case one disputant's move initiates a shift to an off-task topic or dialogue activity while the other one makes an on-task contribution, the mediator opts to provide a conditionally relevant response to the latter and continue discussion without disruption. Co-design is evident in the fact that what is on-task or off-task is negotiated and constructed in the course of interaction, which can be illustrated by ill-timed off-task activities or off-task topics that mediators incorporate into the discussion when they see the potential of those topics to contribute to creating the desirable outcome of the interaction.

Mediators try to control interaction by shaping what people disagree about and how they pursue controversy. In other words, when mediators "design communication", they design and manage a disagreement space. They do that in less than ideal conditions. As it was mentioned earlier, disagreement space constantly develops and evolves as the interaction unfolds. The dynamic character of disagreement space presents a challenge for the mediator to manage it. As Schon and Rein (1994) state, it is inevitable that design moves can result in unintended effects as the designers work under the conditions of uncertainty and complexity. It is not always obvious what is going on in the discussion until it happens, and the way mediator's moves are constructed can open possibilities for the participants to go off-task. This happens, for example, when the mediator lets disputants build an argument or initiate some topic as it may be relevant for the outcome of interaction but disputants would take this advantage to attack each other and make an attempt to discredit their opponent.

Creating the process of deliberation is a mutual endeavor and accomplishment of all the participants; however, the mediator has a more active role in this process. There are multiple ways the interaction can unfold, and the mediator faces a challenge to create an institutionally preferred format of talk in less than ideal circumstances by using local resources available in interaction. In other words, the mediator shapes interactivity from what is possible in this particular interaction, "which is somewhere between what ought to be and what is" (Aakhus, 2003, p. 284).

APPENDICES

Table 1.1

The Producer of the Turn and the Recipient of the Turn (Chapter 3)

Category	Items
The producer of the turn	H (husband or ex-husband)
	W (wife or ex-wife)
	M (mediator)
The recipient of the turn	H
	W
	M
	H and W
	H and M
	W and M

Table 1.2

References to People in/ People out of the Immediate Situation (Chapter 3)

Reference	Items	Token
People in the situation	H (husband or ex-husband)	he, my husband, the one who
	W (wife or ex-wife)	she, their mother
	M (mediator)	she
People out of the situation	child/children	your children, my children, the kids, the children, my kids, Scott, my son, your son, your 6-year old son, these poor kids
	(ex-)spouse's family member	her mother, my mother, your mom, my brother
	close acquaintance	my people, Alex
	neighbor	a 15-year old kid, Meg White, she, her 15-year old son, the 15-year old next door
	baby-sitter	a baby-sitter

Table 1.2

References to People in/ People out of the Immediate Situation (Chapter 3)

Reference	Items	Token
	witness	Carol
	lawyer/ attorney	lawyer, my lawyer, your attorneys
	judge	the judge
	psychiatrist/ psychologist	a psychiatrist, a psychologist

Table 1.3

References to People out of the Immediate Situation (Chapter 3)

Reference	H	W	M
child/children	17	11	21
(ex-)spouse's family member	6	3	
close acquaintance	1	1	
neighbor	10	1	
baby-sitter	1		
witness	4	1	
lawyer/ attorney	2		5
judge			4
psychiatrist/ psychologist			3
Total	41	17	33

Table 2.1

References to the Interactional Product across the Sessions (Chapter 4)

Reference	H	W	M
interactional product	30	14	192

Table 2.2.

Linguistic Tokens Used to Refer to the Interactional Product (Chapter 4)

References to the interactional product	H	W	M
agreement	7	1	35
anything written down			1
arrangement		1	5
contract	1		
court order			10
decision	1		3
forms			1
here (in here)	1		2
it/this/that/they	9	7	40
items			1
order			2
outline (basic)	1		
plan	1	1	70
the paper	1	1	
recommendation		1	
solution			1
something	3	2	6

Table 2.2 (Continued)

Linguistic Tokens Used to Refer to the Interactional Product (Chapter 4)

References to the interactional product	H	W	M
something down on the paper			1
something down in writing			1
something put down	1		
something written	1		1
some things			1
statement			2
there (in there)	1		
things put down/written down			2
thing	2		
visitation order			2
visitation plan			1
ways to go			1
a year round definition			1

Table 2.3

Frequency of References to People Outside of the Immediate Situation (Chapter 4)

Reference	H	W	M
child/children	519	556	366
(ex-)spouse's family member	47	83	30
close acquaintance	50	28	18
neighbor	15	2	1
baby-sitter	9	6	2
witness	8	3	2
lawyer/ attorney	14	16	34
judge	9	3	59
psychiatrist/ psychologist	27	15	18
family counselor	4		1
court	2	4	33
authority (police)	5	9	1
school		1	1
teacher		1	
school director			1
hospital			1
doctor	4		4
abstract people	34	20	91
unknown people (clients)			42

Table 2.3 (Continued)

Frequency of References to People Outside of the Immediate Situation (Chapter 4)

Reference	H	W	M
work connection (colleague)	3		
mediator		1	19
people from San Diego (AA)	1		
researchers			1
a casting director	1		
religion (Jehovah people)	2		
commissioner			3
911	1		
some person (a lady)	1		
authors of the book		1	
professionals		1	

Table 3.1

Frequency of Topic Initiation (Chapter 5)

Transcript	M	H	W
Transcript 1 (9)	55.55%	16.67%	27.78%
Transcript 2 (11)	51.76%	31.77%	16.47%
Transcript 3 (12)	43.75%	29.69%	26.56%
Transcript 4 (18)	64.15%	18.87%	16.98%
Transcript 5 (31)	36.23%	33.26%	30.51%
Transcript 6 (33)	34.15%	29.26%	36.59%
Transcript 7 (34)	56.41%	38.46%	5.13%
Transcript 8 (37)	48.57%	24.29%	27.14%
Transcript 9 (44)	68.75%	31.25%	0%
Transcript 10 (62)	51.72%	20.69%	27.59%
Transcript 11 (56)	41.67%	39.58%	18.75%
Transcript 12 (50)	45.65%	28.26%	26.09%
Transcript 13 (59)	50%	27.14%	22.86%
Transcript 14 (60)	49.33%	42.67%	8%
Transcript 15 (61)	59.62%	17.3%	23.08%
Transcript 16 (3)	38.6%	33.33%	28.07%
Transcript 17 (119)	53.33%	13.34%	33.33%
Transcript 18 (R200)	50%	20.45%	29.55%

Table 3.2

On-task Topics (Chapter 5)

Category	Description	Number of Times Arisen
Visitation issues	a subject matter covering any questions on visitation *such as* visitation arrangements (e.g., where and when to pick up the child, giving a call before visiting a child), visitation time (e.g., visitation schedule on a regular basis and during holidays), visitation frequency, visitation order, visitation rights	54
Custody issues	a subject matter covering any questions on custody such as custody arrangements (present and future), types of custody	17
Collaboration of the parties	a subject matter covering any questions of the participants' working together during a session (e.g., working out a plan together) as well as the parties' dealing with their children on an every day basis (e.g., ex-couple's functioning as parents after their divorce	4
Ways to deal with the situation	a subject matter covering questions on decision making and alternative ways to resolve the parties' disagreement over the arrangements for their children such as going to court (e. g., court hearing, court decision and process) and the procedures related to this process	38

Table 3.2 (Continued)

On-task Topics (Chapter 5)

Category	Description	Number of Times Arisen

	(e.g., court investigation, psychiatric evaluation), and handling the issues in the conciliation court (e.g., what is the conciliation court, how it functions, conciliation court fees)	
Relationship issues	a subject matter covering any questions on relationship such as relationship between the parties (e.g., communication problems, trust, feelings and emotions, marriage (good things in marriage, marriage issues), divorce, separation, frequency of contact between the parties, the effect of relationships problems on children, relationship between parents and children (e.g., parents' influence on their children, reasons for a child's negative attitude toward a parent), relationship with the parties' other members of the family (e.g., dealing with the ex-husband's sister).	40
Personal information	a subject matter covering personal details such as the location of each parent (past and present), their contact information, information about children (age, name, residence), information about attorneys, family members, the parties' acquaintances and friends,	26

Table 3.2 (Continued)

On-task Topics (Chapter 5)

Category	Description	Number of Times Arisen
	the parties' occupation, the way parties spend holidays	
Mediation session	a subject matter covering any questions on the organization of a mediation session such as	17
	the rules and procedures of the session, confidentiality of the session, what can be talked	
	about during the session, the mediator's duties, the parties' expectations from the session	
Technical matters	a subject matter covering questions that are not directly related to the task at hand but,	30
	nevertheless, are relevant for the course of the current session and the progress of the	
	case in future such as the recording of the session, the way to spell the child's name,	
	the date of going to court, arranging another session, how to sing the agreement,	
	who should meet first with the mediator for a separate conversation, having a separate	
	conversation with each party, contacting and involving the attorneys, setting up an appeal,	
	the period of time needed to conduct the evaluation process, the parties' plans for the rest	
	of the day after the session, reasons for filing for the divorce at a different location	14

Table 3.2 (Continued)

On-task Topics (Chapter 5)

Category	Description	Number of Times Arisen
Agreement	a subject matter covering any questions on the parties' agreement such as an existing agreement between the parties, the essence of the agreement, the formulation of the agreement, the parties' understanding of the agreement, and the temporality of the agreement	
Interaction process during the mediation session	a subject matter covering any questions on how the interaction unfolds such as the parties' behavior during the mediation session, violations of the rules of conduct, irrelevance of the discussion	19
Children's interests.	a subject matter covering any questions on what is in the interest of the parties' children such as safety matters, things to do in order to help a child, the effect of arrangements on children.	17
The parties' behavior and character features	a subject matter covering any questions on the parties' characteristics and behavior outside the mediation session such as a party's involvement in the AA program, controlling information by a party	7

Table 3.2 (Continued)

On-Task Topics (Chapter 5)

Category	Description	Number of Times Arisen
Children's behavior and personality	a subject matter covering different aspects of children's behavior and character such as telling different stories to parents, behavior of bright children, children's abilities (decision making by children), children's problems (health issues, mental state), ways to deal with children	8
Financial issues	a subject matter covering any questions on the parties' financial standing such as a difficult financial situation due to the end of marriage, financial help, and child support	4

Table 3.3

Off-Task Topics (Chapter 5)

Category	Description	Number of Times Arisen
Parties' negative behavior	a subject matter focusing on parties' personalities, actions, and events that depict them in a negative light (e.g., physical abuse)	46
Financial issues	a subject matter covering questions related to financial matters such as child support	7
Court process	a subject matter covering questions related to court procedures	1
Parties' interests	a subject matter covering any questions on what is in the interest of the parties	1
Private matters	a subject matter covering certain aspects of private life of the parties or the mediator	2

Table 4.1

On-task Dialogue Activities (Chapter 6)

_____

Category   Description

_____

Dialogue activities orienting   dialogue activities that contribute to resolving disputants' problem in the course of the

    toward the dispute resolution   current mediation session (e.g., information seeking, negotiation, clarification,

    therapeutic discussion)

Dialogue activities situating things   dialogue activities that do not directly contribute to working out an agreement in the

    outside of the session   course of the session but are on task in terms of situating things outside of the session that

    are relevant for the progress of the case in future (e.g., recommendation giving and

    recommendation seeking)

Dialogue activities maintaining   dialogue activities that are not directly related to the task at hand but focus on

    the mediation process   maintenance of the mediation process (e.g., instructing, inviting, apology-making,

    criticizing, and praising)

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