DIVORCE MEDIATION IN NORTHEAST OHIO:

PERCEPTIONS OF LEGAL AND SOCIAL SERVICES PROFESSIONALS

A Thesis

Presented to

The Graduate Faculty of The University of Akron

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

Nicholas A. Cookro

August, 2009

DIVORCE MEDIATION IN NORTHEAST OHIO:

PERCEPTIONS OF LEGAL AND SOCIAL SERVICES PROFESSIONALS

Nicholas A. Cookro

Thesis

Approved:

_____	_____
Advisor Dr. Pamela A. Schulze	Department Chair Ms. Sue Rasor-Greenhalgh
_____	_____
Faculty Reader Mr. Gary Rosen, J.D.	Dean of the College Dr. James M. Lynn
_____	_____
Faculty Reader Dr. David Witt	Dean of the Graduate School Dr. George R. Newkome
	_____
	Date

TABLE OF CONTENTS

Page

LIST OF TABLES v

CHAPTER

I. INTRODUCTION 1

II. REVIEW OF THE LITERATURE 4

Introduction 4

Social Conflict Theory 5

Divorce and its Consequences 6

The Best Interests of the Child Doctrine 7

Attachment Issues 11

Mediation 13

Perceptions of Mediation 19

Research Questions 20

III. METHODS 22

Participants 22

Questionnaire 23

Procedures 23

IV. RESULTS 25

Categorical Coding for Open-ended Responses 27

V. DISCUSSION 36
Major Challenges 36
Perceived Benefits 38
Positive Perceptions 39
Court Impact 39
Familiarity with Mediation 40
Study Limitations 41
Implications and Future Directions 42
REFERENCES 44
APPENDICES 48
APPENDIX A. IRB APPROVAL LETTER 49
APPENDIX B. QUESTIONNAIRE 50

LIST OF TABLES

Table		Page
1	Frequency of occupation	23
2	Differences among groups in reported familiarity with mediation	26
3	Mean perceptions of mediation as a function of familiarity	28
4	Perceived benefits of mediation	34
5	Perceived challenges of mediation	35
6	Suggestions for improvement	35

CHAPTER I

INTRODUCTION

Taking a quick glance around the world sheds an interesting light onto conflict. It is pervasive, seen in every society on the planet. It's almost as if the conflict depicted on the nightly news is in fact an integral aspect of the society itself. This is also an idea reflected by Niccolo Machiavelli, Karl Marx, and the Social Conflict Theory (Farrington & Chertok, 1993). Essentially, this theory describes a society in which change is constant and necessary. This change in society manifests itself through conflict.

Social Conflict theorists advocate the studying of conflict in order to profit most fully from its occurrence within the social system (Farrington & Chertok, 1993). From this theoretical perspective it would seem that conflict must not be viewed in a strictly negative light. In fact, it seems that social conflict can actually serve a social function. When a conflict is resolved, the social system is changed (Farrington & Chertok, 1993). For example, if a domestic relations case is decided in court and positive aspects can be extruded and then used in subsequent cases, society has benefited from the conflict. These societal changes occur over time due to continued conflict. It is important to study conflict in order to more fully understand and make predictions about the social system in which the changes occur.

In the United States, divorce has established itself as a part of the collective consciousness. Many people are familiar with the concept of divorce. By examining aspects of divorce from the Family Conflict perspective, a better understanding of this particular social phenomenon may develop. The study focused upon one cross-section of social conflict: divorce. Divorce is a conflict between two social beings within the context of the family, society's most fundamental social unit.

The divorce process is a very stressful time for anyone that may be involved. There are many different angles that must be examined during the divorce process to ensure a complete understanding is developed. This has proven to be a very difficult task. One way that has been used to help lessen the amount of stress involved is the use of a form of alternative dispute resolution (ADR). The particular form of ADR examined in this work was called mediation.

Mediation is an attempt to bring about a peaceful settlement or compromise between parties through the objective intervention of a neutral party (Emery & Wyer, 1987). It is becoming an increasingly common support service offered to divorcing families in the United States. Mediation is a tactic for resolving custody issues with little legal intervention. Mediation works to provide a starting point for feuding parties to attempt to resolve their cases without continued litigation. Research supports the idea that mediation has had a positive impact on many whom have used this form of dispute resolution. The goal of mediation is for the parties involved to reach an amicable agreement that all can agree they had a part in developing.

The purpose of this study was to gain some insight into the perceptions held about mediation among a particular cross-section of the community. Once these perceptions

are examined, the findings should help to add to the body of research on mediation. There is a breadth of information that can be gained from examining the perceptions.

Social conflict theory is used as a theoretical lens through which to examine the issue of mediation. I examined an aspect of societal conflict in order to learn from that conflict. In this study, professionals who attended an interdisciplinary conference focused on the best interests of the child were questioned to obtain their professional opinions regarding the effectiveness of divorce mediation. The conference was promoted among lawyers, judges, magistrates, social workers, family and consumer sciences professionals, educators, and child therapists/counselors.

The participants were presented with a series of statements regarding mediation, and they rated their agreement or disagreement with the statements. The participants were also asked to respond to open-ended questions regarding the advantages and challenges of mediation. By examining the perceptions of those most closely involved with mediation, a better understanding of this method for resolving conflict will add to the body of knowledge already developed on divorce. Following the tenets of Social Conflict theory this study will then enable social scientists to more fully understand and predict the changes that will occur within the social system.

CHAPTER II

REVIEW OF THE LITERATURE

Introduction

Mediation is a form of ADR used in domestic relations and family courts around the country to help quell disagreements between parties. This study examined the perceptions of mediation among those professionals working within the close or direct vicinity of mediation. This group included attorneys, judges, magistrates, social workers, and other specialists in varying fields. First though, an in-depth examination of the published literature was needed.

In order to examine divorce fully, it needed to be set into theoretical context. Social conflict theory represents a theoretical perspective that explains a good deal of the social function of divorce. This is the first topic examined in the literature review. From there the review of literature moved to the broad topic of divorce and its many consequences. Some of these consequences have led to shifts in public policy. The legal manifestation of these social shifts was the introduction of the best interests of the child doctrine (BICD) (Hasday, 2004). An examination of the BICD followed in the next section of the literature review.

The focus led intuitively towards attachment and the issues that are relevant to divorce and keeping with the best interests of the child. This introduction of attachment

to the custody equation further compounded an already difficult situation. With the importance of upholding positive attachment relationships, a way for both parties to come to a compromise seems a necessity (Willemsen & Willemson, 2000). Mediation is possibly the answer to this issue. It is also the final topic examined in-depth in the following literature review. This chapter concludes with a discussion of the study and the primary research questions.

Social Conflict Theory

Within conflict theory the social structure is described as being prone to constant evolution and change (Sprey, 1979; Farrington & Chertok, 1993). Within this description of social structure is the belief that social change is common. This social change comes about through conflicts that are built into the social system (Sprey, 1979). These conflicts arise due to a feeling of dissimilar allocations of power. Within the social system there are differences in social power between many different groups. Some examples could be the government and its citizens, mother and father, children and adults.

Conflict theory assumes that continuous social altercations are necessary for the progress of societal evolution. Conflict, then, can be either positive or negative depending upon how it is managed. It should not be simply avoided, since society actually has a need for conflict in order to develop. That being the case; calls to eliminate divorce and separation from the social landscape miss an important point. Perhaps the focus on divorce should be to more adequately manage the intricate aspects of the divorce process. Thus, it is important to study divorce processes (both legal and social) and

societal mechanisms put in place to manage or mediate one of the most conflicted aspects of divorce: child custody.

Divorce and its Consequences

Glick (1988) estimated that about 40% of the then current generation of children would experience parental divorce before the age of 18. In the last 20 years or so, research has documented that both parents and their children are at risk after a divorce or separation occurs. Studies have shown that both parents and children who experience family disruptions because of divorce are at risk of having problems with health and well-being (Maccoby & Mnookin, 1992). Parents dealing with divorce have been shown, in the short-term, to experience feelings of anger, anxiety, depression, loneliness, and impulsivity (Hetherington, 1989, 1993).

The effects of divorce continue over the years. Chase-Lansdale & Hetherington (1990) found that during the initial years following divorce, both residential and nonresidential parents are at-risk for experiencing psychological issues. In addition, both divorced men and women have been found to be more likely to have higher rates of illness than men and women who do not experience divorce (Chase-Lansdale & Hetherington, 1990). Even more troublesome are the findings of Umberson and Williams (1993). They found that nonresidential fathers engage in more health compromising behaviors, such as alcohol consumption and drug use. It is also of concern that nonresidential fathers are over-represented among suicides and homicides (Umberson & Williams, 1993).

In addition to the effects on parents, parental divorce can also have developmental implications for children. Various researchers have found that children with divorced

parents are likely to display elevated levels of anti-social behaviors. These behaviors can include, but are not limited to, aggression, poor school performance, and problems with peer relationships (Amato & Keith, 1991; Hetherington, 1989). In one study in particular, Sandier, Wolchik, MacKinnon, Ayers, & Roosa (1997) calculated the risk that divorce places on children. Their findings suggest that nearly 22% of conduct problems are related to parental divorce.

There are long-term implications for these effects of divorce upon children's development as well. In one particular longitudinal study, Zill, Morrison, & Coiro (1993) concluded that the effects of divorce can persist into adulthood. The study found that adults who had experienced the divorce of their parents as children were at risk for a number of different problems. They were found to have had poor relationships with their parents, high levels of problem behavior, and also a higher likelihood of dropping out of high school and seeking out professional mental help (Zill, Morrison, & Coiro, 1993). In order to ensure that children and their development are respected during the divorce process, a legal doctrine was born.

The Best Interests of the Child Doctrine

In the United States, as in many other countries, children used to be considered the personal property of the father (Hasday, 2004). This meant that the father's determinations on anything concerning the welfare of the child took precedence. Over the years there was a shift in this belief, though to one of the opposite intent. Many states in this country shifted from the father as caregiver to the mother as the caregiver. This shift in public policy became known as the tender years doctrine (Hasday, 2004). The tender years doctrine was a judicial reasoning tool used in child custody cases. Basically

it presumed that given all other circumstances as equal, during a child's tender years, the custody of the child should be that of the mother's. This doctrine lasted for quite some time in the United States.

It wasn't until the 1970s that there was another public policy shift with regard to custody decisions. This was meant to be a shift from predominantly the mother receiving custody, to a more gender neutral decision making process. This was intended to reflect a shift from the interests of the parent or caregiver to the interests of the child (Maccoby & Mnookin, 1996). This public policy shift led to the best interests of the child doctrine (Hasday, 2004).

The best interest of the child doctrine is actually an aspect of *parens patriae*. *Parens patriae* is Latin for "father of the people." In legal circles, it is in reference to the power of the state to overrule the rights of biological parents or primary caregivers, in order to act as the representative for the child (Hasday, 2004). The eventual development and use of this doctrine in U. S. Domestic Court has represented a shift in public policy that reflects changing beliefs about child custody, gender norms, and parental rights (Hasday, 2004).

During the course of a custody proceeding, a judge or magistrate can order various investigations. These help the judge or magistrate when working to determine the best interests of the child. Social workers, Guardian ad Litems, psychologists, and other experts can be brought in to help determine the best interests of the child and the arrangement of custody (Hasday, 2004). The best interests of the child doctrine works to consider the needs, wishes, and feelings of the child involved in these cases to attempt to represent the child's basic rights (Hasday, 2004).

The best interests of the child doctrine is considered the gold standard in deciding custody cases across the United States (Kelly, Redenbach, & Rinaman, 2005). Yet, there is no widely held definition of what this doctrine entails (Emery, O'donohue, & Otto, 2005). As was noted above, due to the lack of a clear-cut set of guidelines for judges and lawyers to follow, each case is decided independently. There needs to be an established guideline that judges and magistrates can look to when deciding issues of the best interest of the child. This would aid in bringing about some degree of consistency when deciding cases dealing with custody issues. If judges are given the power to pick and choose which aspects of the doctrine to use, then the best interest of the child doctrine is subject to judicial biases, and thus is rendered practically meaningless (Artis, 2004; Liu, 2004).

In making decisions regarding the child's residence and parent-child contact, courts primarily consider the safety and well-being of the child. The bulleted list below summarizes factors that researchers recommend courts consider in applying the best interests of the child doctrine.

- The age of the child (Maccoby & Mnookin, 1992; Artis, 2004)
- The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare (Maccoby & Mnookin, 1992; Willemsen & Willemson, 2000; Artis, 2004)
- The preference of the child, if old enough to express a meaningful preference (Artis, 2004)
- The parents' wishes (Maccoby & Mnookin, 1992; Artis, 2004)
- The mental and physical health of those involved (Maccoby & Mnookin, 1992; Artis, 2004)

- The duration and adequacy of the child's current living arrangements (Maccoby & Mnookin, 1992; Willemsen & Willemson, 2000; Hasday, 2004; Richman, 2005)
- The desirability of maintaining continuity of living arrangements (Maccoby & Mnookin, 1992; Willemsen & Willemson, 2000)
- The capacity of each parent to cooperate or to learn to cooperate in child care (Maccoby & Mnookin, 1992; Willemsen & Willemson, 2000)
- The motivation of the parties involved and their capacities to give the child love, affection, and guidance (Maccoby & Mnookin, 1992; Artis, 2004; Richman, 2005)
- The child's adjustment to the present home, school, and community (Maccoby & Mnookin, 1992; Willemsen & Willemson, 2000; Artis, 2004; Patterson, 2004)
- The effect on the child if one parent has sole authority over the child's upbringing (Maccoby & Mnookin, 1992; Willemsen & Willemson, 2000; Richman, 2005)
- The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects:
    1. The child emotionally
    2. The safety of the child (Maccoby & Mnookin, 1992; Artis, 2004)
- The existence of any history of child abuse by a parent (Hasday, 2004; Richman, 2005)

The extent to which different factors are examined in individual cases is left solely to the presiding judge in each case (Artis, 2004). This could cause a problem because of the human equation: corruption, stereotyping, or bias (Liu, 2004; Quinlow, 2005; Artis, 2004; Covell & Howe, 1999). When most anyone is given the responsibility

to judge a situation without a clear set of guidelines, it seems that personal bias is going to play a role. For example, in the process of *voir dire,* attorneys are able to question potential jurors about their backgrounds and potential biases before being invited to sit on a jury (Hoffman, 1999). This process implies that people have a tendency to filter information through their own biases, in spite of their intention to be objective. The point here is that magistrates and judges, while sitting in a position of power, are still human. They sometimes judge based on personal experiences and values.

Another study showed that in some instances joint custody was awarded even with the evidence of domestic abuse (Bancroft, Cuthbert, Mesh, Silverman, & Slote, 2004). In this particular study, the researchers looked at varying court cases that issued joint custody even with evidence of domestic violence. What the researchers found was that the interpretation of the best interests doctrine was interpreted by individual judges to point to the idea that two parents are better for development than just one (Bancroft, Cuthbert, Mesh, Silverman, & Slote, 2004). That study goes on to show that the best interests doctrine can be left open to negligent interpretation in some instances.

Attachment Issues

Children who enjoy relationships of intimacy and security with their closest caregiver(s) in the first three years are more likely than those who do not to be curious and explore their environments (Ainsworth, 1979; Bowlby, 1988). In addition, children who build secure relationships with the primary caregiver(s) are also more likely to exhibit pro-social behaviors with both peers and adults than those children who do not have secure relationships (Bowlby, 1988; Willemsen & Willemson, 2000). These children have also been found to be more confident in their communication skills, more

able to both play and learn independently, and also, they are more likely to grow up and have successful relationships in marriage and in work (Bowlby, 1988; Weiten, 1998; Shaffer, 2001; Willemsen & Willemson, 2000). This shows that positive attachment relationships may help foster constructive developmental goal attainment.

Attachment relationships need to be taken into account in all custody proceedings (Richman, 2005). In a perfect world, judges, domestic relations lawyers, and all other professionals working with custody disputes would have a working knowledge of child development and developmental theories and practices. While it is easy for child and family development professionals to take for granted how important attachment issues are in the lives of children, it is not common knowledge. A given child may have formed several attachment relationships. Developing a custodial plan to preserve them all may be difficult. Regardless of this fact, these relationships do matter, and they have a great impact on the child's development. When attachment relationships are overlooked in custody cases, the negative effects can have long-term developmental impact (Bancroft, et al., 2004).

Courts must move quickly to provide custodial plans that offer children stable, long-term living situations. In developmental terms, months can mean progression through a number of developmental stages (Shaffer, 2001). Children deserve a high degree of expediency in deciding these issues of custody. This expediency should relate directly to the age of the child/ren involved in these cases. For example, infancy is a sensitive period for all aspects of development: physical, neurological, cognitive, and emotional. In the early months of life, an explosion of rapid developmental changes are taking place. Litigation can go on for months or years, and thus the child can change

dramatically by the time there is a ruling about custody or parenting arrangements. Thus, infants have less time for lengthened debate in deciding custody than would a 15-year-old. It is vital that we modify legal procedures to follow this guideline. What is needed is a formal way in which to strike a balance between working quickly and making the best custody decisions. Time management in these cases tends towards the best interests of the child.

Further adding to the issue, states and counties in this country are able to set their own custody laws and standards (Maccoby & Mnookin, 1992). The federal government has different interpretations for deciding custody cases as well (Thronson, 2005). This adds to the informality of the custody process. Custody proceedings are inherently ethical decisions, not simply legal ones (Paulson, 2004). One way to change the emphasis of these cases is by giving some power back to the parents. A way to do that is presented in the next section.

Mediation

These issues highlight the idea that divorce has far reaching implications for many different aspects of development of both the child and the parents. Due to this fact, and the potential for problems among parents and their children affected by divorce, support services for these families have been developed. One of these support services in particular is the focus of this study. In the early 1980s, mediation was introduced as an avenue for resolving custody/visitation disputes between parents who were seeking a divorce (Buehler & Gerard, 1995). California was the first state to adopt legislation mandating that courts require parents to resolve differences with the use of a mediator (Buehler & Gerard, 1995). Mediation is an attempt to bring about a peaceful settlement

or compromise between parties through the objective intervention of a neutral party **(**Emery & Wyer, 1987**)**. The methods used to carry out mediations and the way that parties are involved in mediation in different courts may differ slightly, but the basic idea behind mediation is summarized in this section.

My direct contact with mediation has been limited. While conducting a practicum at the Summit County Domestic Relations Court in Akron, Ohio, I was able to sit in on only one mediation session. From my discussions with the in-house mediator, the methods for conducting mediations differ slightly in different programs. The mediator at this court, during my time there, was a magistrate who deals only with mediation and no longer hears cases. In other programs the mediator may not be a magistrate.

While working on a practicum at the Summit County Domestic Relations Court, mediation sessions took place in one of the courtrooms. The parties face each other with the mediator and a member of the Family Court Services sitting together at the end of the table. They will then begin by attempting to deal with issues of contention between the two parties. The mediator simply asks what the areas of contention are between the two parties and what they believe needs to be done in order to reach an agreement. The intention here is to guide the parties to come to an agreement without the use of coercion. This gives the feeling to the parties that they have control over the situation (E.M. Schneider, personal communication, March 17, 2006).

This feeling of empowerment is one of the largest benefits to using this method of alternative dispute resolution (Maccoby & Mnookin, 1992; Ellis & Stuckless, 1996). Another benefit is that the Summit County mediation program is free, although costs associated with mediation vary nationwide. Even in cases where the mediation sessions

are not free, when the parties can work out an agreement without the need for on-going litigation, legal costs have been found to decrease (Pearson and Thoennes, 1984; Kelly, 1990; Ellis & Stuckless, 1996; Emery, 1995; Irving & Benjamin, 1995). If mediation attempts are successful, the divorce process can become much shorter and much less complicated (Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, 2001). This is due to the reduced need for on-going litigation and the reduction of parental conflict (Emery, et al., 2001).

Emery and various colleagues conducted a comprehensive, longitudinal study in which a group of 71 families from a Virginia court were randomly assigned either to attempt mediation or to continue down legal avenues: attorney negotiation or litigation (Emery & Wyer, 1987; Emery, Matthews, & Wyer, 1991; Emery, Matthews, & Kitzmann, 1994; Kitzmann & Emery, 1994; Emery, et al., 2001). In the first report, Emery and Wyer (1987) found that the divorcing parents who mediated their cases were 67% more likely than the group of parents who litigated to reach agreement and avoid further litigation. One year after the initial cases, the researchers conducted a follow-up study. The researchers found that the mediation group was more likely to comply with agreements that had been made, but not different from the litigation group in terms of rates of relitigation (Emery, Mathews, & Kitzmann, 1994). There was evidence found that the parents in the mediation group were more likely to engage in cooperative behaviors than the parents who were in the litigation group. Clearly, cooperative parenting is more positive for the family dynamic overall. Cooperative parents get along better with each other, which in turn is reflected in the relationships between the child and each parent.

The sample was again studied nine years later (Dillon & Emery, 1996). In this study mothers, but not fathers, reported that noncustodial parents who had been assigned to mediation had more frequent contact with their children and were more involved in making decisions related to the child. They also found that parents in the mediation group reported having better communication with the other parent about their children following the mediation as opposed to parents in the litigation group (Dillon & Emery, 1996). The findings from these studies provide considerable evidence that mediation can positively affect the divorce process, both initially and for years after the fact.

Twelve years later, they followed up on their initial findings to see whether or not they remained constant (Emery, et al., 2001). Emery and his colleagues found that nonresidential parents who mediated were more likely to maintain contact with their children in comparison with nonresidential parents who used other avenues. The relationships between noncustodial parents and their children were better when the parents used the mediation service (Kelly, 1989; Emery, et al., 2001). If separated parents are able to develop a cooperative style of parenting, children's adjustment to the divorce tends to improve compared to children whose parents are unable to work cooperatively (Hetherington, Bridges, & Insabella, 1998; Kelly, 1989).

Depner, Cannata, and Ricci (1994) conducted an extensive examination of community mediation programs. They collected parental satisfaction data from almost 1,400 parents who had been directly involved in some form of custody dispute in 51 counties in California. Overall, they found that among the sample, almost 66% of the parents were able to reach agreements without having to involve the court in any way (Depner, Cannata, & Ricci, 1994). They also found that 80 to 90% of the parents were

satisfied with the "helpfulness" of their mediation experience and their opportunities to discuss family issues openly (1994).

Currently the evaluation results provide some evidence of the efficacy of mediation. Mediation has been found effective in assisting parents in reaching agreements involving children (Emery & Wyer, 1987; Emery, Mathews, & Kitzmann, 1994; Depner, Cannata, and Ricci, 1994; Emery, 1995; Emery, et al., 2001). A positive connection has been found between mediation and post-divorce parenting (Irving &Benjamin, 1995; Emery, et al., 2001). It also appears that cases that used a mediation program to resolve disputes were less likely to seek out continued legal intervention to solve custody issues (Emery, et al., 2001). Mediation can improve parental behaviors that extend into the future (Emery, et al., 2001). In general, the less that judges and lawyers are involved with the decision making process during litigation, the more satisfaction the parties report (Ellis & Stuckless, 1996; Hughes & Kirby, 2000).

While there is a great deal of research that points to the benefits of mediation, there was a study that highlighted some of the technicalities of contextualizing these statements. The satisfaction with the custody-decision making process, whether litigation or mediation, depends primarily on the situation that each parent is seeking (Ellis & Stuckless, 1996). For instance, mothers who are seeking sole custody are more likely to get their way taking the litigation route (Ellis & Stuckless, 1996). Whereas fathers who are seeking sole custody are more likely to get their way following the path of mediation (Ellis & Stuckless, 1996). They do go on to note that if outcomes that are valued by parties are held constant, the parties who chose mediation are more satisfied with

mediation than the parties who chose litigation are with the process of repeated court hearings, negotiation among lawyers, and trials (Ellis & Stuckless, 1996).

These findings primarily support the positive aspects of custody mediation. Unfortunately most of these studies examined the topic from the outside. It is important, though, to consider the views of those working within the realm of Family Law, in regard to these services. Of particular concern is the need for a better understanding of the perceived effectiveness of mediation among the legal community and those professionals working directly with mediation programs. Without the support of magistrates, attorneys, judges, and social workers, fewer programs may be developed. In addition, with the input from these groups, they may more fully support the programs.

Through discussions with those at the Summit County Domestic Relations Court, it appears that the social workers at the court seemed to be the only group that held the program consistently in high regard (R. Flick, personal communication, February 15, 2006). Aside from this group the attorneys, magistrates, and judges all seemed to be divided in their opinions. One magistrate in particular, believed that mediation was unrealistically successful. She couldn't understand how previously feuding parties could go into mediation and come up with a mutual agreement in such a quick fashion (R. DiDonato-Heimbaugh, personal communication, February 17, 2006).

As for attorneys, one that I spoke with on the matter summed up the overall opinion shared by other attorneys working in domestic relations. From the lawyers' standpoint, the mediation program could be both helpful and harmful to the legal process (D. Lombardi, personal communication, February 21, 2006). It is considered harmful from the view that mediation lessens the impact on court decisions that the attorneys have

directly. This is due primarily because mediation lessens the need for on-going litigation (Emery, et al., 2001). It may also be considered harmful because agreements struck in mediation are not binding in the court room. Mediation may be considered helpful for the same reasons that it is harmful. This may be why it is a contested subject.

Perceptions of Mediation

There is a tendency of those in the legal and social service fields to interpret the success of mediation in the wrong context. As pointed out earlier, the views on mediation vary greatly across the board. Research points to the idea that mediation does have positive effects on both the custody decision making process, and to the parties involved with mediation (Emery & Wyer, 1987; Emery, Mathews, & Kitzmann, 1994; Emery, 1995; Emery, et al., 2001; Ellis & Stuckless, 1996). There still remains a complacent attitude, among some in the field, about mediation which may be directly correlated with its failures in certain situations. To borrow an idea from sociology, the outcome of mediation may sometimes be doomed as a self-fulfilling prophecy.

As with other aspects of custody cases, mediation is also caught up in the mire of formality. There are no established norms for mediation. Mediation programs are primarily modeled after other programs that are perceived as being successful in other geographic areas (E. M. Schneider, personal communication, March 17, 2006). This method of development may be flawed and lead to problems with the mediation process. First, what works in one community may not work in another. Secondly, the actual mediator(s) play a large role in the success of the mediation program. There is another aspect that needs further examination as well. Although this has not been directly

examined, it is reasonable to expect that perceptions of mediation among professionals in the legal and social service fields may correlate to the successes or failures of mediation.

Hughes and Kirby (2000) believed that by examining the perceptions of mediation among those working with mediation programs, there may be evidence uncovered that could help improve the implementation of mediation programs in other areas. They point out in this study that there has not been enough evaluation of mediation programs throughout the United States. With more evaluation, there will be better implementation of mediation and in turn more successful interactions with mediation by families. In the conclusion of the study, Hughes and Kirby state that much more evaluation is needed to foster positive solutions to the issues of mediation and its implementation. This study also reiterates the ideas discussed at the beginning of this chapter as they concern family conflict and how it is studied. The evaluation of these mediation programs will help other programs proactively progress just as the study of conflict helps society progress.

Research Questions

The main goal of this research is to add to the collective knowledge about mediation. It will help to gain some insight into the perceptions that different groups working with mediation have about its effectiveness. In addition this research will help to highlight differences among the groups being questioned. This research will help add to the body of research on the perceptions of mediation and how those perceptions can lead to positive solutions to existing problems. In the context of Social Conflict Theory the studying of mediation will also help to more fully understand and make predictions about the social system in which the changes occur. In addition, it may be possible to

suggest that the negativity surrounding divorce is due, in part, to the perceptions placed upon this social conflict.

Through a questionnaire, data were collected from different professionals interested in interdisciplinary perspectives on the best interests of the child. Participants were recruited at the 2008 Families and Community Interdisciplinary Seminar. Since the focus of the seminar was interdisciplinary perspectives on the best interests of the child in child abuse and family violence cases and will be promoted among a wide range of legal and social services professionals, this seminar was an ideal site to recruit participants for the proposed study. The questionnaire focused on the perceptions of the participants concerning different areas of mediation. The specific research questions were:

(1) What were the perceived major challenges to effective mediation?

(2) What were the perceived benefits of mediation?

(3) What proportion of the sample perceived mediation programs as positive?

(4) Which professional grouping perceives mediation as having the most positive impact on the court system?

(5) How does self-rated familiarity with mediation affect professionals' views of mediation?

CHAPTER III

METHODS

Participants

The participants in this study included various groups working primarily in Northeast Ohio. The sample was recruited at the 2008 Families and Communities interdisciplinary seminar. Those attending the conference included judges, magistrates, attorneys, social services professionals, educators, clinicians, students, and academics. The projected number of participants at this conference was 100, with approximately one third of the participants coming from the legal profession. The actual number of participants at the seminar numbered close to 125 with 86 taking the time to complete the questionnaire. Of these 86, approximately one third were legal professionals.

The occupations of the participants are described in Table 1. Participants' responses regarding their occupation were coded into categories (attorney, social worker, judge/magistrate, etc).. As can be seen in Table 1, legal professionals (attorneys & judges/magistrates) made up 37.2% of the sample. Approximately 21% of the sample identified themselves as social workers, and 42% identified themselves as "other." The "other" category included other social service professions aside from social work (e.g. child advocates, youth services providers, program coordinators), counselors, therapists, and educators (including preschool, K-12, and post-secondary).

Table 1

Frequency of occupation

Valid	Occupation	Frequency	Percent	Valid %	Cumulative %
	attorney	27	31.4	31.4	31.4
	judge/magistrate	5	5.8	5.8	37.2
	social worker	18	20.9	20.9	58.1
	other	36	41.9	41.9	100.0
	total	86	100.0	100.0	

Questionnaire

The questionnaire used in the study (see Appendix B), was adapted from a questionnaire used by Hughes and Kirby (2000) in their study of legal professionals' views about mediation. The questionnaires were completely anonymous, and participants were not asked to provide any identifying information. The demographic questions asked had to do with county (due to each county administering its mediation program differently), profession, and familiarity with their county's mediation program. There were ten Likert-scale statements about mediation on the questionnaire. Participants were asked to rate each statement on a scale of one to five, one meaning that the participant strongly agreed with the statement, and five meaning that the participant strongly disagreed with the statement. There were also three open-ended questions regarding the benefits and challenges of mediation. In order to increase the response rate, the questionnaire was designed to be completed in approximately five to ten minutes.

Procedures

The questionnaires were placed at each seat in the banquet room where lunch was served. The participants were given time at lunch to fill out the questionnaire. The

principal investigator and the faculty advisor were available to answer questions if necessary. The questionnaires were collected by the principal investigator along with the help of the faculty advisor and a graduate assistant. All procedures were approved by the University of Akron Institutional Review Board (see Appendix A).

CHAPTER IV

RESULTS

Most of the Likert Scale items on the questionnaire were analyzed using t-tests. The question pertaining to perceived impact on the court system was analyzed using analysis of variance (ANOVA). For this question the sample was divided into four groups: lawyers, judges/magistrates, social workers, and other. The only significant difference among groups was on the item "How familiar with you with mediation in your county?" There was a significant difference among the four groups, $\underline{F}$ (3,78) = 10.01, $\underline{p}<.001$, $\eta^2=2.78$. As shown in Table 2, Tukey HSD post-hoc analyses revealed that the "attorney" group reported familiarity was significantly lower (indicating more familiarity) than the "other" group (M = 1.96 and 3.17 respectively) and approached significance with the "social services" group (M = 2.76). The "judge/magistrate" (M = 1.40) reported the most familiarity with mediation, and differed significantly from the "social services" and the "other" groups.

The post-hoc analyses revealed that the four groups of professionals could be divided into two relatively homogeneous subsets: legal professionals and non-legal professionals (primarily social services professionals). Dividing the sample into two groups offered the advantage of dividing the sample more evenly into 30 legal

professionals and 42 non-legal professionals. Thus, the sample was divided into two groups (legal and non-legal professionals) for all subsequent analyses.

Table 2

Differences among groups in reported familiarity with mediation

	Mean Difference (I-J)	Std Error	Type of Professional	Significance
judge/magistrate	-0.56	.48	attorney	
	-1.36	.50	soc svc	*
	-1.77	.47	other	*
attorney	-0.80	.31	soc svc	†
	-1.77	.47	other	**
social services	-.041	.29	other	

**p<.01; **p<.01; †=<.10*

T-tests on the Likert-scale items revealed that there were no significant differences between the two groups with the exception of the question, "How familiar are you with mediation in your county?" Consistent with the results of the ANOVA, the legal profession group had greater self-rated familiarity with mediation, df (1,80), t=-5.13, p=.001. Lower numbers indicated greater familiarity: the mean familiarity rating for legal professionals was 1.87, and the mean familiarity rating for other professionals was 3.04.

Since there were differences between groups in terms of reported familiarity with mediation, I next tested the hypothesis that familiarity with mediation might be associated with professionals' perceptions of mediation. Indeed, results indicated that familiarity was a better predicator of opinions about mediation than profession. The sample was divided into two groups: high familiarity (ratings of 1 - 3) and low familiarity (ratings of 4 - 5).

As can be seen in Table 3, the high familiarity group indicated higher agreement for the following items: Mediation reduces the need for litigation, df (1, 80), t=2.58,

p=.012; Mediation leads to better child outcomes, df (1, 80), t=2.25, p=.027; Mediation is cost effective, df (1, 80), t=3.08, p=.003; Mediation has a positive impact on the court system, df (1, 80), t=2.31, p=.024; and Overall positive perception, df (1, 80), t=2.04, p=.05. No further significant results were obtained.

Categorical Coding for Open-ended Responses

The open-ended responses were used to aid in the interpretation of the quantitative results. Allowing the participants to provide open-ended comments gave the findings a depth and richness that it would not otherwise have had with the qualitative results alone. In order to summarize the open-ended comments, they were coded into qualitatively distinct categories. The categories for each open-ended question are described below followed by a bulleted list of examples.

Q1: In your opinion, what are the benefits, if any, of mediation?

- Reduces Conflict: All references to reduced conflict between parents or enhanced conflict resolution were included in this category.
    - " fewer conflicts between parents"
    - "better conflict resolution"
    - "decrease conflict. increase solution"
    - "reduced conflict from court"
- Cost Effective: All references to decreased costs to parents or to the court were included in this category.
    - "most case [sic] more cost effective than a lawyer"
    - " lowers the cost for each participant"
    - " less expensive"

Table 3

Mean perceptions of mediation as a function of familiarity

	Low Familiarity (n=37)	High Familiarity (n=45)
mediation reduces need for litigation	1.89	1.54*
mediation reduces conflict	2.07	1.76
mediation leads to better child outcomes	2.02	1.70*
mediation is cost effective	2.11	1.56**
mediation gives parents more control	2.09	1.73
most divorcing parents are too high conflict	3.60	3.59
mediation has a positive impact on court system	2.04	1.70*
arrangements equally fair to both mothers and fathers	2.51	2.19
mediation has positive impact on families	2.00	1.84
overall positive perception of mediation	1.80	1.54*

**p<.01; **p<.01*

- Parental Control: This category represents an essential aspect of mediation. By allowing the parents to direct the flow of the agreement, they have more ownership.
    - "parents get a say in what will happen with their children/situation"
    - " allows parents to continue to act in parental role - results more likely to be accepted because of participation result"

- ” allows individuals to control their outcome, and [e]mpowers parents to make decisions about how to co parent their children themselves as opposed to having the court impose a plan for them”

- Alternatives: This category represents the idea that mediation benefits from its ability to offer alternatives to litigation.
  - “creative solutions”
  - “alternatives and more creative solutions”
- Motivated Parties: This category reflects the idea that mediation can help motivate the parties involved.
  - “people are more likely to follow mediated orders”
  - “parties motivated to come to agreement”
- Communication: In this category communication is mentioned as a benefit of mediation.
  - “people learn to communicate positively”
  - “improved communication”
- Children Come First: The comments for this category point to the idea that mediation can offer benefits to the children involved in these cases as well.
  - “less stress to child”
  - “children’s emotional growth”
- Other: The final category represents the remaining comments which did not fall in any of the above categories. Examples include:
  - “too many to name”

- "mediation works when both parties are willing to follow agreements and wish to do the right thing"

Q2: In your opinion, what are the biggest challenges to successful mediation?

- Parental Participation: This category includes references to both physical participation such as showing up and also willingness to participate and put faith into the process of mediation. Examples include:
  - "getting the parents to go"
  - "desire of parents to participate"
  - "having everyone come to the table"
- Cost/Funding: This category touches upon the cost or source of funding for mediation programs. Examples include:
  - "cost of mediation"
  - "funding that makes it possible to deliver services freely"
- Skilled Mediator: The next category touched upon the level of ability of the mediators working in the field. Examples include:
  - "having a skilled mediator"
  - "well trained mediators"
  - " a strong mediator who knows his/her stuff"
  - "qualified facilitators"
- Domestic Violence: Comments from this category touch upon the idea that mediation is not fitting for domestic violence situations. Examples include:
  - "not appropriate for domestic violence cases"
  - "too high conflict among parties involved"

- Emotional Parties: This category represents the comments which pointed to emotional parties as challenges to successful mediation. Examples include:
    - "lowering the emotional level of the participants"
    - "letting go of strong feelings"
- Attorneys: This category was represented by both broad and narrow comments on the subject, as is reflected in the following examples.
    - "presence of parties attys."
    - "if you have attorneys involved"
    - "attorneys"
- Time: These statements could mean how quickly the mediation sessions take place and also how much time in the process can be committed to mediation attempts.
    - "time - takes more than 1 session typically."
    - "timeliness – sessions"

Q3: In your opinion, how can mediation be improved?

- Public Awareness: The need for increased public awareness about mediation programs was the most often listed topic on this question.
    - "explain the process to potential participants"
    - "educate the public as to its benefits…"
    - "more awareness for people in need"
    - " increase public awareness of why it is a better alternative"

- Mediator Training: This category is closely linked to the previously listed category from the challenges question. This category similarly deals with the level of and availability of training for mediators.
    - "more training or recruitment of facilitators"
    - " more + [sic] better training"
    - "required continuing education"
    - "comprehensive training on mother father children family issues"
- Funding: This was the one category which was seen in all three of the questions. All comments pertaining to funding or cost were included in this category.
    - "fund it for people who cannot afford it"
    - "publicly funded"
    - " more funding, to have it offered to everyone"
    - "make it available without cost"
- Mandatory: The comments in this category all stated the same thing:"make it mandatory"
- Not sure: In this category the participants actually noted that they were unsure.
- More sessions/time: This category includes references to more mediation sessions. As well as how much time in the process can be committed to mediation attempts. Examples include:
    - "more of it"
    - "give more time to discuss issues"
    - "one session is not always productive - better results with 2 or 3 sessions"

- Other: The final category represents the remaining comments which did not fall in any of the above categories. Examples include:
    - "as any court order - making the parties accountable and upholding orders/agreement w/consequences if not followed"
    - "better looking mediators"
    - "keep att[orne]ys out"

Question 1: Benefits of Mediation

The first open-ended question asked about the perceived benefits of mediation. The categories formerly mentioned also aided in the answer to this question. The largest category under benefits is reduced conflict. As shown in Table 4, 24.2% of the participants comments on this question noted conflict reduction or resolution as a benefit of mediation. The next largest category in the benefits section was parental control. Nineteen of the comments noted parental control as a perceived benefit. The next largest category was cost effectiveness. Cost was an issue noted by 14.7% of the participants. The final categories can be seen in Table 4.

Question 2: Challenges to Mediation

As can be seen in Table 5, the biggest challenge perceived by the participants was party participation. Over thirty one percent of the participants noted party participation as a challenge to mediation. The next two largest categories were having a skilled mediator (9.3%) and cost or funding issues (8.1%). The next category in order of frequency was emotional parties.

Question 3: Improvements Needed

Table 6 summarizes the participants' suggestions for improvement of mediation programming. The most frequently mentioned improvement by the participants was increased public awareness. As with the other categories, specific quotes can be found in the previous subheading. This category included thirteen comments. The next most frequent category was better mediator training (14%). The next two largest categories were funding (8.1%) and not sure/no opinion (7%). The final three categories can be seen in Table 6.

Table 4

Perceived benefits of mediation

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	cost effective	14	14.7	14.7	14.7
	reduces conflict	23	24.2	24.2	38.9
	parental control	19	20.0	20.0	58.9
	alternatives	2	2.1	2.1	61.0
	party motivation	3	3.2	3.2	64.2
	communication	5	5.3	5.3	69.5
	children first	5	5.3	5.3	74.8
	Other	4	4.2	4.2	79.0
	no comment left	20	21.1	21.1	100.0
	Total	95	100.0	100.0	

Table 5

Perceived challenges of mediation

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no comment left	23	26.7	26.7	26.7
	party partic.	27	31.4	31.4	58.1
	cost, funding	7	8.1	8.1	66.3
	skilled mediator	8	9.3	9.3	75.6
	dom. violence	5	5.8	5.8	81.4
	emotional parties	6	7.0	7.0	88.4
	attorneys	5	5.8	5.8	94.2
	Time	2	2.3	2.3	96.5
	Other	3	3.5	3.5	100.0
	Total	86	100.0	100.0	

Table 6

Suggestions for improvement

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no comment left	38	44.2	44.2	44.2
	better mediator training	12	14.0	14.0	58.1
	Funding	7	8.1	8.1	66.3
	increased public awareness	13	15.1	15.1	81.4
	mandatory	3	3.5	3.5	84.9
	not sure/no opinion	6	7.0	7.0	91.9
	more sessions/time	4	4.7	4.7	96.5
	Other	3	3.5	3.5	100.0
	Total	86	100.0	100.0	

CHAPTER V

DISCUSSION

The discussion will focus first on the research questions presented in the study. I will discuss each of the research questions individually. Research questions are as follows: What are the major challenges to mediation? What are the perceived benefits of mediation? Who had the most positive perceptions of mediation? What is the perceived impact of mediation on courts? and Which group had the greatest perceived familiarity with mediation? The study limitations as well as the implications and future directions of the study will also be discussed.

Major Challenges

The first research question attempted to find the perceived major challenges to mediation. The coding categories used for the open-ended questions helped to answer this question. The first major challenge perceived by the participants was parental participation. The participation in question was of a very broad scope. This was evinced by the fact that the comments included references to both physical participation (e.g. "absent parties"), as well as a willingness to participate mentally/emotionally in the mediation process. The physical participation simply points to the idea of all parties physically showing up for all mediation sessions. The issue of willingness or openness is also an important consideration, since parents who

mediate are more likely to engage in cooperative behaviors than parents who litigate (Emery, Mathews, & Kitzmann, 1994).

The next challenge perceived by the participants had to do with cost/funding issues. This area appears to be a challenge for two reasons. First, several participants believed that mediation should be offered free of charge to the parties involved. Also, more funding would make multiple mediation sessions more readily available. This area serves as a difficult situation for the courts. If mediation is to succeed they must defray the costs to help encourage participants to try a form of alternative dispute resolution. What the courts need to see is that those who mediate end up saving the court money due to less litigatory action. As noted in chapter two, even when mediation sessions are not free, if the parties work out an agreement without on-going litigation, legal costs decrease (Pearson and Thoennes, 1984; Kelly, 1990; Ellis & Stuckless, 1996; Emery, 1995; Irving & Benjamin, 1995).

The next challenge of note is the need for a skilled mediator. This challenge was seen in 9.3% of the comments which mentioned the need for "skilled" and "well-trained" mediators. It seems that there is an apparent need for more and better mediator training to deal effectively with the emotionally charged issues that inevitably come up in the process of mediation.

The next category in order of frequency was Emotional Parties (as noted in comments such as "acute emotions" and "when one participant is belligerent, unstable or suffers some form of personality disorder." This category is closely related to parents' willingness to participate. If parties are able to step back and discuss the issue calmly, they are more likely to participate (Emery, Mathews, & Kitzmann, 1994).

Perceived Benefits

The second research question asked about the perceived benefits of mediation. The categories previously mentioned also aided in the answer to this question. The largest category under benefits was reduced conflict. References to conflict were sometimes broad. Some noted that mediation leads to reduced conflict between the parties in comments such as "fewer conflicts between parents" and "more of a chance that both parents feel ok about and will follow through with plan." On the other hand, some of the comments reflected a reduction in conflict from the court's stand-point. Comments such as "avoid court cases" and "stay away from court involvement" illustrate some participants' belief in the ability of mediation to the need for an adversarial litigatory process. This category relates back to the theoretical basis for this study. By studying conflict where it happens, society can profit from its occurrence in the social system (Farrington & Chertok, 1993). It is the mishandling or neglect of conflict that leads to negative outcomes.

Another major issue cited by participants was parental control. Several participants made comments such as this one: "[Mediation] empowers parents to make decisions about how to co-parent their children themselves as opposed to having the court impose a plan for them." Parental control represents an essential aspect of mediation. The statements that reflect the belief that mediation "allows parents to continue to act in parental role, [and therefore] results [of mediation are] more likely to be accepted" reflect the idea that the feeling of control will aid in the mediation process. Some participants also believed that parental control could help long term outcomes. This feeling of control

by the parties is one of the largest benefits to using mediation (Maccoby & Mnookin, 1992; Ellis & Stuckless, 1996).

The next category from the benefits question was cost effectiveness. Some of the statements described mediation as "cost effective" in that it "lowers the cost for each participant" and "saves time and money." Other statements noted the cost effectiveness for the courts. It has been show previously that mediation can help reduce the need for further litigation (Ellis & Stuckless, 1996; Hughes & Kirby, 2000). This indicates that mediation may be cost effective for both the parties involved as well as the court system.

Positive Perceptions

The third research question had to do with the proportion of the sample that perceived mediation programs positively. This was a very large group. In fact none of the sample answered the question with disagree or strongly disagree. In addition, only five of the participants answered with unsure. This means that 94.2% of the sample had overall positive perceptions of mediation. The nature of the seminar itself (the topic was Best Interests of the Child) no doubt attracted professionals with a very pro-child/family orientation, which may have predisposed them to view mediation more positively than others in their profession who did not attend.

Court Impact

The fourth research question asked which professional grouping perceived mediation as having the most positive impact on the court system. All of the groups indicated positive perceptions of mediation's impact on the court system. In the case of this question the number one represented "strongly agree" on the questionnaire. The smallest occupational grouping (judges/magistrates) perceived mediation the most

positively. The mean for the judges/magistrates group was 1.4.The next closest grouping was the social workers with a mean score of 1.83. The attorneys followed with a mean score of 1.88 followed by the "other" grouping with a mean score of 1.94. The small number of judges and magistrates who participated does pose a problem for interpretation—the sample of judges and magistrates present had a lot invested in the mediation program in Summit County, and that alone could account for the positive perception.

Familiarity with Mediation

The fifth research questions asked how self-rated familiarity with mediation affected professionals' views of mediation. The legal professionals group reported greater self-rated familiarity with mediation compared to the other groups of professionals. This shows that the legal professionals perceived themselves as more familiar with mediation in their respective county. No further significant results were obtained between legal and non-legal/social services professionals.

There were some questions raised about how the participants interpreted the question regarding familiarity with mediation. Most who rated themselves low in familiarity completed the questionnaire and even included comments that showed they had formed some opinions about mediation. Some who answered the previous question regarding their experience with mediation (see Appendix B) stated that they had experience, but then scored themselves low on the familiarity question. Written comments suggested that some participants had familiarity with mediation in a county other than their county of residence. This suggests that perhaps the words "in your

county" should not have been included in the question, and we should have specifically asked them to note in which county they have/had experience, if any.

In testing the hypothesis that familiarity with mediation might be associated with professionals' perceptions of mediation, I found that familiarity was a better predictor of opinions about mediation than profession. Based on this finding, the sample was divided into two groups: high familiarity (ratings of 1 - 3) and low familiarity (ratings of 4 - 5) for subsequent analyses. Analyses revealed that the high familiarity group perceived mediation as more positively than the low on this question. This finding suggests that perceived familiarity is more predictive of attitudes toward mediation than other demographic factors, at least for this group of participants. It may be that an effort to increase both professionals' and the general public's knowledge of the benefits of mediation (e.g. publicized program evaluation results) can help to improve the attitudes toward mediation.

Study Limitations

There were several limitations to this study. First, as mentioned previously, our convenience sample of seminar attendees had a very pro-child and pro-mediation orientation. Another limitation was the content of the conference. The talks that were given and the speakers who spoke that day also influenced the participants. The themes discussed generally had a pro-child/mediation theme. The final limitation was the relatively small sample size. But there were advantages to be found in two of the limitations.

Although this sample was very pro-child/mediation, the participants' comments gave a very honest look at the strengths and weaknesses of mediation. The benefits,

challenges, and improvements mentioned in the open-ended questions came from the standpoint of people who were familiar with mediation and wanted it to succeed. That kind of feedback is much more practically valuable than if the comments had come from people who would like to see mediation fail. In addition, the small sample size allowed us to focus in on a more specific demographic. This is beneficial in specifically examining Summit County's mediation program (and may generalize somewhat to counties that have similar programs), since programs vary from one county to another and in many cases from one court to another.

Implications and Future Directions

This study was designed to help bolster the body of information on the area of divorce/custody mediation. I believe this study has accomplished this goal. There is still research to be conducted, though, in order to more fully grasp this form of social conflict. Because the main parties involved in the divorce/custody process are the parents, examining their perceptions on the process of mediation could help bolster our body of knowledge. I believe it would also be beneficial to examine the difference in effectiveness of free vs. fee-based mediation sessions. If parties are financially invested in the process of mediation, as opposed to free sessions, they may have more of an incentive to reach an agreement or may feel pressure to settle early. Finally, an examination of the differences in effectiveness of in-house mediation and those conducted outside of the court atmosphere would be beneficial. When the parties have to go to another physical location they may be less inclined to attend the sessions. They may also feel more secure and less adversarial in a non-legal environment.

An interesting and unexpected finding was that reported familiarity with programming was a better predictor of attitudes toward mediation than was profession. This seems surprising in light of previous studies that found attorneys to have less positive evaluations of mediation than other types of professionals (Hughes & Kirby, 2000). This may point to the need for increased program evaluation efforts, and broader dissemination of findings to both the professional and lay community. What may make support for these programs challenging is that professionals report more familiarity with mediation are more convinced of its positive impact than those without this direct experience. This can be a problem when mediation is provided by the court. Mediation may be seen a luxury the court can no longer afford in tough economic times. It is important to promote mediation among professionals as well as the general public if funding is to be maintained.

In conclusion, participants' responses to open-ended questions indicated that mediation should be made available to all couples with custody disputes, that it should be low-cost or free, and that it should be made available in multiple sessions if needed in order to help mediation realize its potential as a program to resolve conflict in a more positive way. Social Conflict Theory points to the importance of studying conflict in order to more fully understand and make predictions about the social system in which the conflict occurs. If these changes were implemented on a broad scale, perhaps this pervasive conflict within our societal structure may be understood more fully, and its damaging effects could be minimized.

REFERENCES

Ainsworth, M. D. (1979). Infant-mother attachment. *American Psychologist, 34*, 932-937.

Amato, P. R., & Keith, B. (1991). Parental divorce and: A meta-analysis. *Psychological Bulletin*, 110, 26-46.

Artis, J.E. (2004) Judging the Best Interests of the Child: Judges' Accounts of the Tender Years Doctrine. *Law & Society Review*, 38(4), 769-806.

Bancroft, L., Cuthbert, C. V., Mesh, C. M., Silverman, J. G., & Slote, K. (2004). Child Custody Determinations in Cases Involving Intimate Partner Violence: a Human Rights Analysis. *American Journal of Public Health*, 94 (6), 951-957.

Bowlby, J. (1988). *A Secure Base: Parent-Child Attachment and Healthy Human Development.* London: Routledge.

Buehler, C., & Gerard, J. M. (1995). Divorce law in the United States: A focus on child custody. *Family Relations*, 44, 439-458.

Chase-Lansdale, P. L., & Hetherington, E. M. (1990). The impact of divorce on life-span development: Short and long term effects. In Baltes, P. B., Featherman, D. L., & Lerner, R.M. (Eds.), *Life-span development and behavior* (Vol. 10) (pp. 105-150). Hillsdale, NJ: Lawrence Erlbaum.

Covell, K. & Howe, R. B. (1999) The impact of children's rights education: A Canadian study. *International Journal of Children's Rights*, 7(2), 171-183

Depner, C. E., Cannata, K., & Ricci, I. (1994) Client evaluations of mediation services. *Family Court Review*, 32(3), 306-325.

Dillon, P. A., & Emery, R. E. (1996). Divorce mediation and resolution of child custody disputes: Long-term effects. *American Journal of Orthopsychiatry*, 66(1), 131-140.

Ellis, D., & Stuckless, N. (1996). *Mediating and negotiating marital conflicts*. Thousand Oaks, CA: Sage.

Emery, R. E. (1995). Divorce mediation: Negotiating agreements and renegotiating relationships. *Family Relations*, 44, 377-383.

Emery, R. E., Laumann-Billings, L., Waldron, M. C., Sbarra, D. A., & Dillon, P. (2001). Child Custody Mediation and Litigation: Custody, Contact, and Coparenting 12 Years After Initial Dispute Resolution. *Consulting and Clinical Psychology*. *69*, 323-332.

Emery, R. E., Mathews, S. G., & Kitzmann, K. M. (1994). Child custody mediation and litigation: Parents' satisfaction and functioning one year after settlement. *Journal of Consulting and Clinical Psychology*, 62, 124-129.

Emery, R. E., O'donohue, W., & Otto, R. K. (2005). Custody Disputed. *Scientific American Mind*, 16 (3), 64-67.

Emery, R. E., & Wyer, M. M. (1987). Child custody mediation and litigation: An experimental evaluation of the experience of parents. *Journal of Consulting and Clinical Psychology*, 55, 179-186.

Farrington, K., & Chertok, El (1993). Social Conflict Theories of the Family. In P.G. Boss, W.J. Doherty, R. LaRossa, W.R. Schumm, & S.K. Steinmetz (Eds.), *Sourcebook of Family Theories and Methods: A Contextual Approach* (pp. 357-384). New York: Plenum Press.

Glick, P. C. (1988). *The role of divorce in changing family structure: Trends and variations*. In S. A. Wolchik & P. Karoly (Eds.), Children of divorce: Empirical perspectives on adjustment. New York: Gardner.

Hasday, J.E. (2004). The Canon of Family Law. *Stanford Law Review*, *57*, 825-900.

Hetherington, E. M. (1989). Coping with family transitions: Winners, losers, and survivors. *Child Development*, 60, 1-14.

Hetherington, E. M. (1993). An overview of the Virginia Longitudinal Study of Divorce and Remarriage with a focus on early adolescence. *Journal of Family Psychology*,7, 39-56.

Hetherington, E. M., Bridges, M., & Insabella G. M. (1998). What matters? What does not? Five perspectives on the association between marital transition and children's adjustment. *American Psychologist*, *53*, 167-184.

Hoffman, M. B. (1999). Abolish Peremptory Challenges. *Judicature*, *82*(5), 202-205.

Hughes, Jr., R., & Kirby, J.J. (2000). Strengthening Evaluation Strategies for Divorcing Family Support Services: Perspectives of Parent Educators, Mediators, Attorneys, and Judges. *Family Relations, 49*(1), 53-62.

Irving, H. H., & Benjamin, M. (1995). Family mediation: Contemporary issues.Thousand Oaks, CA: Sage.

Kelly, J. B. (1989). Mediated and adversarial divorce: Respondents' perceptions of their processes and outcomes. *Mediation Quarterly*, 9, 71-88.

Kelly, J. B. (1990). Is mediation less expensive? Comparison of mediated and adversarial divorce costs. *Mediation Quarterly*, 8, 15-26.

Kelly, R. F., Redenbach, L., & Rinaman W. C. (2005). Determinants of Sole and Joint Physical Custody Arrangements in a National Sample of Divorces. *American Journal of Family Law, 19*(1), 25-43.

Kitzmann, K. M., & Emery, R. E. (1994). Child and family coping one year after mediated and litigated child custody disputes. *Journal of Family Psychology*, 8, 150-159.

Liu, H. E. (2004). Custody Decisions in Social and Cultural Contexts. *Columbia Journal of Asian Law*, 17 (2), 227-305.

Maccoby, E. E., & Mnookin, R. H. (1992). *Dividing the Child: Social and Legal Dilemmas of Custody*. Cambridge, MA: Harvard University Press.

Patterson, E. (2004). Homosexual Rights and the Placement of Children. *Policy & Practice of Public Human Services*, 62 (1), 28-28.

Paulson, A. (2004). Modern Life Stretching Family Law. *Christian Science Monitor*, 96 (179), 1-10.

Pearson, J., & Thoennes, N. (1984). Mediating and litigating custody disputes: A longitudinal evaluation. *Family Law Quarterly*, 17, 479-524.

Quinlow, M. F. (2005). Primary Custodial Parent Could Pay Child Support. *American Journal of Family Law*, 18 (4), 243-244.

Richman, K. D. (2005). (When) Are Rights Wrong? Rights Discourses and Indeterminacy in Gay and Lesbian Parents' Custody Cases. *Law & Social Inquiry*, 30 (1), 137-176.

Shaffer, D. R. (2001). *Developmental Psychology: Children and Adolescence* 6th Ed. Stamford, CT: Thomson Learning College Press.

Sprey, J. (1979). Conflict theory and the study of marriage and the family. In W.R. Burr, R. Hill, F.I. Nye, & I.L. Reiss (Eds.), *Contemporary theories about the family Vol. II. General theories/theoretical orientations* (pp. 130-159). New York: Free Press.

Thronson, D. B. (2005). Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts. *Texas Hispanic Journal of Law & Policy, 11*(1), 44-73.

Umberson, D., & Williams, C. L. (1993). Divorced fathers: Paternal role strain and psychological distress. *Journal of Family Issues,* 14, 378-400.

Weiten, W. (1998). *Psychology: Themes and Variations* 4th edition. Pacific Grove, CA: Brooks/Cole Publishing Co.

Willemsen, E., & Willemson, M. (2000). The Best Interest of the Child. *Issues in Ethics*, 11 (1), 60-66.

Witt, D. (2007) Obtained from class notes: *Family Crisis.* The University of Akron: OH.

Zill, N. Morrison, D. R., & Coiro, M. J. (1993). Long-Term Effects of Parental Divorce on Parent-Child Relationships, Adjustment, and Achievement in Young Adulthood. *Journal of Family Psychology*, 7, 91-103.

APPENDICES

APPENDIX A

IRB APPROVAL LETTER

The University of Akron

NOTICE OF APPROVAL

Date: August 12, 2008

To: Nicholas Cookro
152 NW 15th Street
Gresham, OR 97030

From: Sharon McWhorter, IRB Administrator

Re: IRB Number 20080809
"Divorce Mediation in Northeast Ohio: Perceptions of Legal and Social Services Professionals"

Thank you for submitting your Exemption Request for the referenced study. Your request was approved on August 12, 2008. The protocol represents minimal risk to subjects and matches the following federal category for exemption:

☐ **Exemption 1** - Research conducted in established or commonly accepted educational settings, involving normal educational practices.

☒ **Exemption 2** - Research involving the use of educational tests, survey procedures, interview procedures, or observation of public behavior.

☐ **Exemption 3** - Research involving the use of educational tests, survey procedures, interview procedures, or observation of public behavior not exempt under category 2, but subjects are elected or appointed public officials or candidates for public office.

☐ **Exemption 4** - Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens.

☐ **Exemption 5** - Research and demonstration projects conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine public programs or benefits.

☐ **Exemption 6** - Taste and food quality evaluation and consumer acceptance studies.

Annual continuation applications are not required for exempt projects. If you make changes to the study's design or procedures that increase the risk to subjects or include activities that do not fall within the approved exemption category, please contact me to discuss whether or not a new application must be submitted. Any such changes or modifications must be reviewed and approved by the IRB prior to implementation.

Please retain this letter for your files. If the research is being conducted for a master's thesis or doctoral dissertation, the student must file a copy of this letter with the thesis or dissertation.

☐ Approved consent form/s enclosed

Cc: Pamela Schulze- Advisor
Cc: Rosalie Hall - IRB Chair

Office of Research Services and Sponsored Programs
Akron, OH 44325-2102
330-972-7666 • 330-972-6281 Fax

The University of Akron is an Equal Education and Employment Institution

APPENDIX B

QUESTIONNAIRE

Please take a moment to participate in this study of professionals' views about parental mediation. Parental mediation has become common in domestic relations court nationwide, although the way that programs are administered varies. One way to evaluate whether these programs are administered effectively is to assess the perceptions that different types of professionals have regarding mediation programs in their counties**.**

Since this is a study of professionals' perceptions, there are no right or wrong answers to any of the questions. Please simply share your perceptions and experiences regarding mediation. Feel free to write any comments you have regarding mediation at the end of this questionnaire.

This research is a thesis project for a Master's student at the University of Akron. As explained in the attached consent form, your responses are completely anonymous and will be analyzed as group data. I appreciate your taking the time to participate in this study; **the questionnaire should take only 5-10 minutes to complete.**

Section A: Demographic Questions

1. What county do you live in? _____

2. What is your current occupation? _____

3. What experience do you have with Parent Mediation? (Please explain briefly)

How familiar do you feel with the mediation program in your county?

1	2	3	4
Extremely Familiar	Somewhat Familiar	A Little Familiar	Unfamiliar

Section B: For each statement below, please indicate your agreement/disagreement with one 1 indicating strong agreement and 5 indicating strong disagreement.

1. Mediation reduces the need for litigation.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

2. Compared to litigation, mediation reduces conflict between parents.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

3. Mediation leads to better outcomes for children.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

4. Compared to litigation, mediation is cost effective.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

5. Compared to litigation, mediation gives parents more control over outcomes of parenting arrangements.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

6. Most separating/divorcing parents are too high conflict to resolve disputes through means other than litigation.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

7. Mediation has a positive impact on the court system

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

8. Mediation leads to arrangements that are equally fair to both mothers and fathers.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

9. Mediation has a positive impact on families.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

10. Overall, my perception of mediation programs is positive.

1	2	3	4	5
strongly agree	agree	unsure	disagree	strongly disagree

Section C:

1. In your opinion, what are the benefits, if any, of mediation?

2. In your opinion, what are the biggest challenges to successful mediation?

3. In your opinion, how can mediation be improved?

4. Please include any additional comments regarding mediation that you may have:

By completing this questionnaire you are giving your consent for the use of this data. If you have any questions, concerns, or if you would like to receive a summary of the findings once the data have been analyzed, please contact Dr. Pamela Schulze at schulze@uakron.edu or (330)972-7725.