NEUTRALITY IN THE MEDIATION SESSION: THE CLIENTS' PERSPECTIVE

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ABSTRACT

Neutrality is arguably one of the most important concepts to the mediation field. Despite its significance to the field, only limited research has been conducted to better understand how neutrality is enacted in practice. Not only is it imperative for mediators to *act* neutrally, they must also be *perceived* by their clients as acting neutrally. The present study investigated whether there are particular mediator behaviors that influence a client's assessment of the neutrality of their mediator. The methodology of this study involved surveying clients from 35 naturally occurring mediation sessions at three community mediation centers in Hawaii. The results showed that clients overwhelmingly assessed their mediators as acting neutrally. Two constructs emerged as potential influences on neutrality: symmetry and transparency. Symmetry (treating both clients equally) and transparency (providing an explanation of past or future behavior) were both positively correlated with clients' assessment of mediator neutrality. Regression analysis, however, showed that symmetry was the stronger predictor of neutrality. Both neutrality and symmetry were positively correlated with client satisfaction with the mediation process, but transparency was not. This study has implications for both practice and research, and provides a foundation for future research in understanding neutrality from both clients' and mediators' perspectives.

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CHAPTER 1. INTRODUCTION

Neutrality in the Mediation Session: The Clients' Perspective

"You're taking his side!" An accusation of bias is quite possibly a mediator's

worst nightmare. Neutrality is a concept that many, if not most, mediators hold dear to

their heart. On par with self-determination, neutrality is so central to mediation that it has

been called the "hallmark" of mediation (Donohue, 1989). Furthermore, neutrality is

often included as an explanation of the role of the mediator, i.e. "neutral third party," and

is even sometimes substituted for the title of the mediator, i.e. "Neutral". It is a concept

that is forefront in both trainings and guidelines for standard of conduct, reflecting the

belief that neutrality is an ethical issue as well. Clearly, the concept of neutrality is

important to the mediation field. Although practitioners and researchers have articulated

their views on the subject, the question still remains: What does neutrality mean from the

client's perspective? In order to better understand this issue, the present study

investigated whether there are particular mediator behaviors that influence a client's

assessment of their mediator's neutrality. With a better understanding of the client's

perception of mediator behavior, mediators can reflect on how they can improve their

own perception of fairness.

The Struggle to Define Neutrality

Like many abstract terms in other fields, academicians and practitioners alike

have struggled to find a mutually acceptable definition of the concept of neutrality. Some

authors have distinguished between definitions of neutrality and impartiality, while others

have distinguished between neutrality with respect to process and outcome.

Alternatively, some argue that neutrality should be viewed as a continuum rather than as

an either/or framework. Despite these efforts, little research focus has been given to understanding the clients' view of neutrality.

Theoretical Perspectives of Neutrality

The concept of *impartiality* is often included in definitions of neutrality, and it is sometimes used as a substitute term. The Model Standards of Conduct for Mediators (Association for Conflict Resolution, 2005), which was also adopted by the American Arbitration Association and the American Bar Association, does not mention neutrality, but does define impartiality as freedom from favoritism, bias, or prejudice. The Model Standards of Conduct stipulated that mediators should not act partially as a result of a client's personal characteristics, including their background, values, and beliefs. Despite this nationally accepted definition of impartiality, there is still a great deal of ambiguity in the terms neutrality and impartiality, especially in many of the codes of conduct at the state level (McCorkle, 2005). State codes of conduct that use the term neutrality usually do so without defining the term, but are often linked in some way to the clients' self-determination, or the freedom to make their own choices (McCorkle, 2005). Many codes use the term impartiality and generally suggest that it means freedom from bias (McCorkle, 2005).

Moore (2003) described neutrality in reference to the relationship or behavior between the mediator and the parties. A neutral mediator has not had a previous or beneficial relationship with any particular party, is not a part of the party's social networks, and does not stand to gain special benefits or payment for special treatment in the mediation session (Moore, 2003). Moore described impartiality in reference to the relationship between the mediator and the issues at hand. An impartial mediator lacks

bias or a preference for any particular participant, their interests, or any particular solution they propose (Moore, 2003). Moore also referred to Cloke's (1994) use of the terms "multi-partial" or "omni-partial," and stated that they might be more accurate terms than impartiality, because mediators act to satisfy all clients' issues and interests. McCorkle and Reese (2005) similarly suggested explaining to clients the meaning of neutrality as having no personal bias toward the either party and explaining impartiality as not having a stake in the outcome of the issues.

Boulle and Teh (2005) stated that impartiality is an absolute necessity in mediation, whereas neutrality is not. They explained that neutrality has a multidimensional meaning, including: (a) having no interest in the outcome, (b) having no prior knowledge of the conflict, (c) having no prior knowledge of either party, (d) not judging the parties, (e) not using substantive knowledge to influence the outcome, and finally, (f) acting evenhandedly, fairly, and without bias toward either party. They referred to impartiality as (a) even-handedness, (b) objectivity, and (c) fairness toward the parties. Boulle and Teh summed these meanings as viewing neutrality as *disinterestedness* and impartiality as *fairness*. In this view, neutrality is the broader, all-encompassing term of which impartiality is a part.

Perspectives on Neutrality toward Process and Outcome

In the struggle to define neutrality, many authors have advocated being neutral toward the outcome but not the process, while others maintain that mediators can still remain neutral and influence the outcome. Interestingly, upholding the value of self-determination, or autonomy to make one's own life decisions, is used as an argument for both viewpoints of the process/outcome issue.

Remaining neutral means influencing the process and not the outcome.

Moore (2003) clearly distinguished neutrality/impartiality between process and outcome, arguing that mediators should be process advocates rather than outcome advocates. He stated that mediators are responsible for the process, including the procedure, communication, and durability and enforceability of the agreement. On the other hand, Moore (2003) stated that specific substantive outcomes such as the amount of money exchanged falls into the realm of advocating a particular outcome and therefore does not constitute neutrality or impartiality. Boulle and Teh (2005) similarly distinguished between the process and outcome in regards to neutrality. They also viewed mediation as primarily a process intervention that upholds the clients' autonomy to make their own choices, but acknowledged that the mediator's control of the process can affect the substance of the outcome, and that the clients themselves will influence the process.

Remaining neutral while influencing the outcome. Gibson (1999), on the other hand, argued for intervening in the outcome as well as the process. He stated that mediators can and should influence the outcome while remaining neutral. For instance, mediators that actively encourage information gathering, sharing and referrals to all parties (as opposed to just one party) are still neutral. By actively treating each party equally and leaving decisions in the hands of clients, the mediator still remains neutral (Gibson, 1999).

Similarly, Gibson, Thompson, and Bazerman (1996) advocated for a rational approach to the process/outcome issue of neutrality that actively steers clients to the best potential solution. Gibson et al. upheld the importance of self-determination of the parties in their explanation that intervening in the outcome to help parties reach the best

possible agreement is both neutral and appropriate because the parties are always free to reject any solution. As an alternative to pure neutrality, they proposed *Symmetric Prescriptive Advice* (SPA), which involves the mediator acting as an advisor to all parties with the parties understanding that the mediator will serve both parties' interests.

There are three components to putting SPA into practice proposed by Gibson et al. (1996). First, an agreement should occur only if both parties can better achieve their goals by a negotiated agreement rather than impasse. Second, there should not be a different agreement that would be more beneficial and acceptable to both parties. Third, there should be full consideration of the distribution of resources. For instance, resources can be distributed according to differing perspectives of fairness, such as *equality* (resources distributed equally), *equity* (resources distributed according to inputs or investments parties have made), and *need* (resources distributed according to the relative needs of the clients).

Still, Gibson et al. (1996) cautioned against common mediator biases that work against the objectives of SPA. The "agreement-is-good bias," means that mediators may prefer any settlement over no settlement, and mediators may see themselves as a failure if no agreement is reached. In the "bias toward closure," once mediators find an acceptable (as opposed to optimal) solution, they start moving toward the agreement-writing phase. Finally, the "equality bias" is an acknowledgement that individuals, clients and mediators included, have differing views of fairness, so the mediator should better inform the parties of the various social justice perspectives of fairness. Gibson et al. (1996) strongly argued for an interventionist approach with regards to the outcome. Rather than being neutral or impartial toward each party, the mediator stays neutral by actively helping each

party, with both parties fully understanding that the mediator will give advice to the other party as well.

A continuum of influence on outcome. Bernard, Folger, Weingarten, and Zumeta (1984) described a continuum of neutrality regarding outcome marked by two polar positions. On the one end of the spectrum is the neutralist strategy, which avoids influencing the outcome; on the other end is the interventionist strategy, which actively challenges an agreement that both parties have accepted (Bernard et al., 1984). A midrange strategy is the option-enhancing strategy. In this middle part of the spectrum, the mediator seeks to expand the parties' options but would not challenge an agreement that was based on examination of all the possibilities, and mediators would not use their personal values or professional judgments to challenge an agreement (Bernard et al., 1984). Bernard et al. also discussed the underlying values that may come into play with regard to the mediator's choice about neutrality toward the outcome. They explicated values that may underlie these strategies, such as the desire to "champion justice" (i.e., the mediator's perception of fairness), valuing the clients' self-determination (the mediator's belief of whether the choices have been made freely and with full information and competence), and finally, the mediator's moral conception of the family (the mediator's beliefs of how family members ought to relate to each other). Ultimately, the authors argued that from a practical standpoint, pure neutrality should neither be a goal nor a desired value. Rather than attempting to stay on the neutralist strategy end of the spectrum, mediators should instead identify their values that may be influencing the outcome and be transparent by openly sharing them with the clients (Bernard et al., 1984).

A continuum of the meaning of neutrality. Similarly, Taylor (1997) advanced the idea that the meaning of neutrality should be viewed as a continuum with distinct ends that she termed "strict neutrality" and "expanded neutrality," as opposed to an absolutist or yes/no framework. Taylor suggested that practitioners who varied along this continuum would have different characteristics. For instance, practitioners closer to the "expanded neutrality" end of the continuum would feel more need to balance power and actively respond to emotions than practitioners on the "strict neutrality" end. Despite these differences, a practitioner could embrace the meaning of neutrality anywhere along this continuum and still do ethical work (Taylor, 1997).

Summary of theoretical perspectives of neutrality. Differing theoretical perspectives of the meaning of neutrality abound in the literature. Impartiality is an important term that refers to freedom from bias and often accompanies (and sometimes replaces) the discussion of neutrality in mediation textbooks and mediator standards of conduct (Association for Conflict Resolution, 2005; Boulle & Teh, 2005; McCorkle, 2005; Moore, 2003). Neutrality with respect to the mediation process or outcome has been an important point of divergence among authors. For some, a mediator cannot remain neutral if he or she attempts to influence the outcome (Moore, 2003); for others, if mediators guard against their own potential biases, it is possible to both influence the outcome and remain neutral (Bernard et al., 1984; Gibson, 1999; Gibson et al, 1996). Finally, Taylor (1997) argued that the meaning of neutrality should be viewed as a continuum, with some mediators practicing neutrality differently than others, but still remaining ethical.

Research on Mediators' Perspective of Neutrality

Although there is an abundance of literature on theoretical perspectives of neutrality in mediation, there is a dearth of research on the subject. Cobb and Rifken (1991) and Douglas' (2008) research on mediator perspectives of neutrality are exceptions. Cobb and Rifken's (1991) research categorized mediator conceptualization of the meaning of neutrality into two terms, whereas Douglas' (2008) research categorized mediator conceptualization of neutrality into four theme areas.

Impartiality and equidistance. Cobb and Rifken (1991) examined mediator's perceptions of neutrality using videotaped mediation sessions, personal interviews with mediators, training manuals, and influential texts. As a result, Cobb and Rifken categorized the meaning of neutrality into two definitions: *impartiality* and *equidistance*. The "neutrality-as-impartiality" meaning implies a lack of feelings, values, or agendas, or at least a separation of bias (viewed as a negative psychological condition) from the process. The second meaning, "neutrality-as-equidistance," involves the mediator's struggle to balance power between the parties. In this meaning, mediators may at times favor one side (viewed as relational closeness) in an effort to help the parties reach an unbiased, symmetrical agreement. Cobb and Rifkin (1991) and Rifkin, Millen, and Cobb (1991) concluded that these two meanings of neutrality, impartiality and equidistance, create a paradox of neutrality in practice. Mediators must at times balance power between parties to achieve an equitable outcome (equidistance), but this practice requires that the mediator favor one party over the other, which contradicts impartiality. Feer (1992) critiqued Rifken et al.'s (1991) analysis of equidistance as a meaning of neutrality, pointing out that balancing power through empathetic communication does not mean

aligning or taking sides, and that equidistance is a tool rather than an overarching concept.

   Multidimensional. Douglas (2008) used a qualitative research approach to understanding mediator perceptions of neutrality in mediation, and her findings were consistent with Boulle and Teh's (2005) multidimensional view of the meaning of neutrality. Using transcriptions of ten in-depth interviews, Douglas identified four themes in "mediators' construction of the meaning of neutrality," (p. 143): impartiality, even-handedness, as related to distinction of process and content, and as related to self-determination. Neutrality as impartiality refers to a lack of bias, whereas neutrality as evenhandedness refers to equal treatment. Mediators also made a distinction that mediators should be neutral to the outcome but in control of the process. The fourth theme area, neutrality as related to self-determination, refers also to the belief that parties should be the ones to evaluate an outcome, as well as whether there is an agreement at all. Thus, mediators make sense of neutrality in part as "both an understanding of the limitations of their role, and of the primacy of the parties' role, the parties' self determination" (p. 150).

Clients' Perspective of Neutrality

   As Heisterkamp (2006) suggested, neutrality is a multifaceted concept, and it is important to develop an understanding of ways in which mediators enact neutrality in practice. The neutrality literature is heavily focused on the academic and practitioners' theoretical understanding of neutrality. However, systematic research, in general, has not been conducted on neutrality, especially from the client's perspective. Consequently, the present study seeks to better understand which mediator behaviors influence the clients's

perception of neutrality. In this paper, the terms clients, participants, disputants, and parties will be considered synonymous for the individuals who, with the assistance of a mediator, are negotiating for a mutually acceptable resolution of their conflictual issues.

Prevalence of the perception of non-neutrality. Despite the fact that the mediation field has given a great deal of theoretical attention to the concept of neutrality, this attention has not shed much light on how often and how much mediator bias clients perceive. While not the focus of her study, Meierding (1993) reported findings about whether clients felt that the mediator was unbiased. Her sample included 119 clients from a pool of 94 cases. Eighty-nine percent of men and 95% of women felt that the mediator was unbiased. The high percentage of clients who did not feel that the mediator was biased reflects positively on the ability of mediators to practice in an impartial manner. However, caution should be used when interpreting the generalizeability of the results or before concluding that mediator bias is not prevalent in the field.

The first area of caution is in regards to the sample used in Meierding's (1993) study. Meierding's study was a useful examination of clients' satisfaction with a specific mediation center. In her discussion, Meierding also cautions against sweeping generalizations based on her sample. The sample included participants that had (a) successfully reached a written agreement, (b) were voluntarily using mediation services (i.e., non court-mandated), (c) used a private mediator (i.e., not in a community mediation program), and (d) were cases involving marital settlement issues. A more diverse sample that includes clients that did not reach agreements, court-mandated mediations, mediations at community centers that use volunteer mediators, and different types of cases would help to increase generalizeability.

The second area of caution is in the phrasing of the bias question used in Meierding's (1993) study. Meierding phrased the question as a yes or no question, with room for remarks. However, phrasing the question as a continuum from non-neutrality to neutrality may be more informative than as a yes or no question because it would allow for the possibility that mediators may be perceived as partially neutral. For some scholars, neutrality is not a question of either/or, or an absolutist term, because absolute neutrality is viewed as unobtainable in practice. Douglas (2008) discussed her opposition to the binary or dualistic logic that is used to debate neutrality, which may be limiting our understanding of neutrality. Rather than attempting to find an absolute truth of whether a mediator is neutral or not neutral, thinking of neutrality in terms of degrees of neutrality rather than in an either/or framework may be helpful to better understand how clients view neutrality.

The need for client-focused research. The limited amount of research on the subject of neutrality, especially from the client's perspective, is unfortunate for a field that places considerable emphasis on neutrality as a central idea. There is little research to be found that explains (a) how commonly clients perceive their mediators as acting in a non-neutral manner and (b) what contributes to the client's perception of bias, should it occur. For mediators to be effective neutral third parties, they must not only behave neutrally – but also be *perceived* as behaving neutrally. As Moore (2003) stated, "The ultimate test of the impartiality and neutrality of the mediator lies in the judgment of the parties: they must perceive that the intervener is not overtly partial or unneutral in order to accept his or her assistance," (p. 54). Considering the need for research on the clients'

perspective of neutrality, including to what extent clients regard their mediators to be

acting neutrally, the first research question was proposed:

RQ$_1$: To what extent do clients in mediation perceive their mediators to be

neutral?

Clients' Perceptions of Mediator Neutrality

Despite differences of opinion on the meaning of neutrality, mediators want to act

fairly and ethically in ways that serves their clients in the best way possible. Many

authors have made arguments for specific behaviors that might be facilitative of those

goals, such as assuming the role of process advocate as opposed to outcome advocate

(Moore, 2003; Boulle & Teh, 2000; Bernard et al., 1984) or using Symmetric Prescriptive

Advice (Gibson et al., 1999) to improve the outcome. Despite these efforts, there is little

clarity on this issue. Even if pure neutrality is ultimately unachievable, understanding

ways in which mediators can best manage tensions such as impartiality/equidistance and

process/outcome would be helpful. From the neutrality literature, there appear to be two

overarching suggestions for ways in which mediators can best serve their clients and

uphold the concept of neutrality: *symmetry* and *transparency*. Symmetry refers to the

equal treatment of parties: what one does with one, one must do with the other. If a

mediator were to act symmetrically, for example, he or she would make sure to

summarize both parties' stories. Transparency refers to providing an explanation of past

or future behavior. For example, a transparent mediator might explain to the clients what

can be expected regarding neutrality before starting the mediation, e.g., "Because

everyone tells their story a little differently, I may speak with one person longer than the

other". Alternatively, he or she might say to one party after a lengthy discussion with the

other party, "I hoped that you don't mind that we took a little bit longer. It's common for parties to take different amounts of time to explain their point of view. Is there anything you'd like to add?"

Symmetry. The principle of equal treatment toward each client is a relatively straightforward and obvious solution, but the enactment of symmetry is problematic. Mediators want to be fair, so it stands to reason that mediators would want to offer equal treatment. A scenario in which a client would want less than equal treatment is similarly difficult to imagine. The difficulty with symmetry is not as an ideal, but rather putting it into practice. While research on the subject is too limited to draw conclusions, three studies (Fuller, Kimsey, & McKinney, 1992; Garcia, Vise, & Whitaker, 2004; Hale and Nix, 1997) point to the possibility of symmetry as a difficulty in practice and a factor in clients' assessments of mediator neutrality. Typical mediation techniques, such as eliciting stories, empowering the "weaker" client, responding to emotions, and enforcing ground rules, complicate practicing symmetry.

Symmetry in eliciting stories. Storytelling is one of the first steps that clients take in the mediation process. After explaining the mediation process, mediators typically begin the mediation process by listening to both clients' perspectives of the situation. In order to do this, practically speaking, it is impossible to act symmetrically because one client must begin by telling his or her story, i.e. somebody gets to go first. The client who tells their story second may be at a disadvantage because they may feel the need to respond to statements made by the first client (Garcia et al., 2002). Cobb and Rifken (1991) argued that storytelling sequence is problematic since the first story remains dominant by setting into place an accusation-justification cycle. Consequently,

storytelling order may affect neutrality by creating the perception that the mediator has aligned with the person who told their story first.

Domenici and Littlejohn (2004) suggested a symmetric approach by giving a relatively equal amount of time to each client to initially explain their story. To keep the time equal, they recommend encouraging a short speaker to elaborate by asking questions or asking a lengthy speaker to summarize. This puts the mediator in a difficult position if he or she is attempting to treat the parties symmetrically. By emphasizing equal time, he or she may use techniques that treat each party differently.

In one of the few studies that examined the clients' perspective of neutrality in mediation, Kimsey et al. (1992) specifically investigated whether storytelling sequence plays a role in influencing client perception of mediator neutrality. The researchers established three experimental conditions using the same conflict scenario, with the same two trained mediators, and 24 different volunteer clients who role-played the mediation session. The three experimental conditions were (a) Disputant A told his or her story first and Disputant B told his or her story second (b) Disputant B told his or her story first and Disputant A told his or her story second, and (c) Disputant A and B told their stories simultaneously using previously videotaped stories. The researchers measured perceived mediator behavior using a scale developed by Burrell, Donohue, and Allen (1988). The scale had four dimensions: *fairness* (e.g. "How fair was the mediator to the other person?"), *competence* (e.g. "Did the mediator seem to know what he or she was doing?"), *listening*, (e.g. "Did the mediator seem to be listening to you?"), and *control* (e.g. "Did the mediator try to impose his or her solutions to the conflict?"). Significant differences were found between the primacy and recency groups regarding the control

dimension. Although the authors concluded that storytelling order influenced the clients'

perception of mediator neutrality, no significant differences were found between the

primacy and recency group in the fairness factor. Thus, it still remains unclear whether

storytelling order affects client perception of mediator fairness.

In addition to the storytelling sequence, the way in which stories are elicited may

also influence clients' perception of neutrality. In a more recent study, Garcia et al.

(2004) investigated a case study involving a bias complaint during mediation. In the

examined case, one of the clients made an accusation of mediator bias during a court

hearing. Both the accusation and the actual mediation session had been videotaped, so

the authors were able to examine conversational moves that might have led to the

perception of bias. One of the findings in the case study was that the manner in which

the mediator solicited each story was not symmetrical. For example, the mediator asked

an open question to the first client, but for the second client, the mediator framed the

question as asking for a response to the first client's story.

Symmetry in empowerment techniques. Empowerment techniques include

education, referrals, encouragement, and other ways of assisting that seek to balance

unequal power and create a more fair process (Moore, 2003). Thus, mediators may

commonly use asymmetrical techniques in their efforts to create a more symmetrical

process and/or outcome. From a symmetry viewpoint, one of the difficulties with

empowerment techniques is that individuals present themselves uniquely in mediation

sessions. Although one party may not be overtly expressing emotion or appear to need

help, they may still be in need. Furthermore, even if they do not have a need for

assistance, the appearance of helping one party more than another can lead to a client's

perception of mediator bias. In the Garcia et al. case study referenced previously, the mediator helped the weaker client (whom she perceived to be weaker because of a difficulty in communicating effectively) by asking her more and different kinds of questions, including supportive questions that helped her to redirect her focus to articulate her point of view. Additionally, the mediator supported the client in terms of asking about and affirming her emotions.

  Symmetry in the enforcement of ground rules. The enforcement of ground rules is another area that may influence the perception of non-neutrality. Hale and Nix (1997) investigated neutrality perception in peer mediation cases, and looked at both actual mediator behavior (using transcripts of the audio taped mediation sessions) and the clients' perspective (using post-participation interviews). Clients in the study were middle school students who were either mediators or clients in a dispute. The mediators had received an initial six hours of basic mediation training plus additional skill-building trainings throughout the school year. Hale and Nix (1997) focused on identifying different forms of neutral and impartial mediator communications (or lack thereof). Their findings point to the importance of symmetry. Clients expressed concern with perceived inconsistency of mediator enforcement of ground rules. They felt that favoritism occurred when the mediator reprimanded one client for a behavior (e.g. interrupting), yet allowed the other client to violate the same rule. Clients also reported that mediators allowed one party to participate more fully in the conversation: while one client was allowed to talk, the other was told that he or she couldn't interrupt, and was not give equal voice.

Symmetry summary. Symmetry has been suggested as one way to manage neutrality in practice. In the few studies that examined neutrality from the client's perspective, there has been some support for a symmetrical approach to neutrality, showing that asymmetrical treatment is a potential issue in a client's perception of mediator bias. Kimsey et al. (1992) found that storytelling order can influence the clients' perception of mediator control. Garcia et al.'s (2004) case study of a bias complaint found that the use of typical mediation techniques, such as empowerment, recognizing emotion, asking for story, and responding or intervening in story, may have contributed to a perception of bias when used unequally or without enough regard for how it may affect perception. Hale and Nix (1997) found that if clients perceive inconsistency of mediator enforcement of ground rules, they may conclude that the mediator was taking sides. In sum, these three studies examined the clients' perspective of neutrality and found some support for the need for symmetrical treatment for achieving a perception of neutrality. Thus, the first hypothesis was proposed:

H_1: Client assessments of mediator symmetry will be positively associated with client assessments of mediator neutrality.

Transparency. The second approach to neutrality that mediators can utilize to manage the difficulties that arise with putting neutrality into practice is transparency, or providing an explanation of past or future behavior. Transparency is a potential option that could be used to manage some of the difficulties with putting neutrality into practice. For instance, transparency could involve providing explanations of their own biases, attitudes toward influencing the outcome and responding to emotions. Transparency might even allow mediators to treat parties asymmetrically, while still remaining neutral

in the eyes of clients. Transparency in mediation can be examined from an interpersonal communication perspective using Uncertainty Reduction Theory (URT).

     Uncertainty reduction theory. URT was originally posited by Berger and Calebrese (1975) as an explanation for the human desire to attempt to reduce uncertainty of another individual's behavior, as well as their own, when they first meet. Individuals may reduce their uncertainty in two ways: prediction and explanation. If the individual is engaged in a *proactive* process of reducing uncertainty, he or she makes predictions about the other's behavior. Alternatively, he or she may attempt to reduce uncertainty by using a *retroactive* process of explaining the behavior after it occurs. Considering that there may be multiple explanations for any given behavior, unintentional misunderstandings may easily occur as a result of false attributions in this retroactive process. Thus, transparency may be viewed as a method for reducing uncertainty by providing an explanation for past or future behavior.

     Uncertainty in mediation. Mediation, by its nature, is a very uncertain process. Although it is quite often the case that clients know each other well (for instance, in divorce mediation), they usually do not know the mediator at all. Thus, mediation adds a new dimension to the clients' communication: a third party who is relatively unknown. In addition to the unknown mediator, the mediation process itself presents a new context in which clients are unsure about what will occur in the mediation session. Although there are steps involved in conducting a mediation session, these steps are flexible depending on the needs of the clients. The type and length of communication with and between clients is variable and uncertain. For example, one client may provide more details when telling their story, thus taking a longer time. The introduction of a third

party in a communication episode further complicates the situation. Clients, unaware of the intricacies involved in conducting a mediation session, may feel greater uncertainty with the process and the role of the mediator when he or she encounters a perceived negative situation such as unequal enforcement of ground rules.

However, if mediators explain their behaviors (i.e. are more transparent and reduce uncertainty) beforehand, it may change the nature of the clients' attribution of an event that might otherwise be perceived negatively. When facing a potentially harmful event such as asymmetrical behavior, clients can use this information in a retroactive attribution process (Berger, 1977) to explain the behavior. In one scenario, without prior information from the mediator, the client might attribute that behavior to mediator non-neutrality. In another scenario, if the mediator had provided information at the beginning of the process, the client might be more likely to attribute that behavior to a neutral or positive reasoning consistent with the mediator's explanation, rather than a negative reason such as mediator bias. Their attribution would be a result of using a retroactive process of behavior explanation: they used prior information provided by the mediator to explain communicative behavior. Reducing uncertainty by providing information can help clients predict and explain behavior in the mediation session. Mediators can reduce their clients' uncertainty through such techniques as being transparent about the process before the mediation begins, when eliciting stories, and when using empowerment techniques.

Transparency in the opening statement. The main opportunity for the mediator to establish transparency is in his or her opening statement, which occurs before the mediation session begins. Moore (2003) explained that the mediator accomplishes a

number of important tasks in the opening statement, such as explaining the mediation process, the mediator's role, impartiality and neutrality, confidentiality expectations, logistics, and ground rules, and answering any questions. Domenici and Littlejohn (2004) stress the importance of the mediator's opening statement. In addition to creating common ground, the mediator's opening statement serves to introduce all the parties, explain the process to the clients, and begin to establish clients' trust (Domenici & Littlejohn, 2004). Explaining important procedures during the opening statement sets client expectations (McCorkle & Reese, 2005).

Providing an overview of the mediation process is especially important in the opening statement. This overview helps the clients by informing them of what they can expect and reduces concerns (McCorkle & Reese, 2005). For example, if a mediator were to not explain the process or inform the clients that each would be given ample opportunity to explain his or her story, one client might experience anxiety when the other client is initially asked to tell his or her story. Without this understanding, the client may feel that the process has started unfairly.

Another key component of providing an overview of the process is to explain ground rules. Ground rules are guidelines for communication behavior that promote common courtesy or respect, such as refraining from interrupting or calling each other names (Domenici & Littlejohn, 2004). Mediators also explain the consequences of breaking a ground rule, such as taking a break, meeting privately, or even ending the session (Domenici & Littlejohn, 2004). Explaining ground rules informs clients upfront about what is expected in terms of behavior (McCorkle & Reese, 2005).

Domenici and Littlejohn (2004) also suggested that mediators inform the parties about the possibility of meeting privately during the session. The prevalence of private sessions varies greatly among mediators and depends on the approach they use. Currently, there are three major approaches to mediation widely accepted in the mediation field, each with avid supporters. The basic philosophies underlying these approaches are as follows: transformative mediators focus on empowerment and recognition, facilitative mediators focus on needs and interests, and evaluative mediators focus on legal rights. In the transformative approach, private sessions are rarely, if ever, used. In the evaluative approach, private sessions are used extensively. The facilitative approach lies in between the other two approaches; the use of private sessions is typically "as-needed" and its prevalence can vary widely. One way of being transparent is for mediators to inform their clients about their approach to the use of private sessions.

In addition to explaining what will happen in the process, mediators also explain the role of the mediator in the opening statement (Domenici & Littlejohn, 2004). Explaining the mediator's role involves explaining what the mediator does *not* do and differentiating it from other roles, such as a judge, attorney, or counselor. McCorkle and Reese (2005) recommended that the mediator explain the meaning of impartiality and neutrality and ensure the clients understand the mediator's commitment to fairness.

Transparency in eliciting stories. McCorkle and Reese (2005) recommended that the mediator provide an overview of the process so that the parties know what to expect. For example, knowing that his or her turn to speak will soon follow may reduce any concerns about the time spent on the first person's story. Storytelling order is a clear example of the difficulty arising from practicing symmetry. In the conversational

analysis of the videotaped mediation session in the Garcia et al. (2004) case study of a

bias complaint, the authors concluded that in addition to a lack of symmetry in story

solicitation techniques, a lack of transparency may have also contributed to the problem.

When explaining the process at the beginning of the session, the mediator neglected to

tell the clients that they would have multiple opportunities to share their perspectives.

In practice, mediators use different strategies to manage this difficulty and try to

ensure a lack of bias in deciding who goes first. For example, the person who first called

the mediator, the plaintiff, whoever happens to sit in a particular chair, and even asking

the parties who prefers to go first are all strategies that mediators use. Depending on

whether the mediator explains his or her choice, these strategies for ensuring a lack of

bias do not necessarily ensure a *perception* of neutrality if the rationale is unknown to the

clients.

McCorkle and Reese (2005) recommended providing a rationale for who tells

their story first when beginning the storytelling phase. However, McCorkle and Reese

(2005) did not necessarily recommend complete transparency. They provided an

example of a student-professor mediation in which the mediator prefers to balance the

power difference by asking the student to speak first, but they do not recommend

explaining this specific reasoning. Rather, they suggested stating an alternate reason,

such as "I'll have the person on my right go first." (p. 102). This example shows the

delicate balance that mediators must play. Transparency may be helpful in reducing

uncertainty, but in some situations, it also might backfire.

Transparency in empowerment techniques. In their analysis of unequal

empowerment techniques presented in the bias complaint, Garcia et al. (2004) pointed out

that responding to stress and affirming emotions are typical mediation techniques. However, because the client who made the bias complaint did not receive the kind of emotional assistance that the other did, and additionally was not aware of the mediator's reasoning (there was no transparency), these "undercover" empowerment techniques may have contributed to the perceived bias. Garcia et al. suggested that increased transparency can reduce the perception of asymmetrical treatment and help to put more decision-making power in the hands of the clients; these suggestions are congruent with Moore's (2003) who cautioned against the use of empowerment techniques on the weaker party without approval of the stronger party because it puts the mediator's impartiality at risk.

Summary of the influence of transparency on neutrality. Uncertainty reduction theory assumes that reducing uncertainty is especially important when individuals first meet in their desire to predict and explain other's behavior. Mediation is a very uncertain process for clients; when they arrive to the mediation session, it may be the first time that they meet their mediator, they may not be familiar with the role of the mediator, and they may have anxiety about how the mediation process will unfold. When providing information in the opening statement, mediators have an opportunity to reduce clients' uncertainty by explaining mediator behaviors, especially in regards to what clients can expect in terms of storytelling order and empowerment techniques.

Mediators who are transparent reduce uncertainty through a proactive process by explaining their behaviors beforehand (i.e., "I may spend a little bit more time with one of you than the other.") and provide useful information to clients when they attempt to predict the behavior of both themselves and others. A proactive uncertainty reduction

strategy may also change the nature of the client's evaluation of a situation that they might otherwise perceive to be biased, such as when the mediator treats the parties asymmetrically. If information is provided upfront in the opening statement, then clients may use a retroactive attribution process to appraise such a situation in a more positive light. They may not be surprised by asymmetrical treatment (such as power balancing or allowing one party to tell their story first) and may instead attribute the behavior as a necessity of process, rather than a bias on the part of the mediator. Thus, the following hypothesis is proposed:

H_2: Client assessments of mediator transparency will be positively associated with client assessments of mediator neutrality.

Transparency vs. symmetry. Transparency may be even more influential on client assessments of mediation neutrality than symmetry. Although perhaps ideal, there are a lot of reasons to suspect that symmetry may also be inherently problematic in practice. Clients are individuals that typically express differing needs, which requires that the mediator uniquely respond to each individual. Garcia et al. (2004) emphasized that neutrality does not mean complete symmetry, which would be impossible in practice because clients have differing content, attitudes, and interactional issues. Storytelling sequence is especially difficult from a symmetry standpoint, because it is impossible for both clients to tell their story first. Giving equal speaking time is also complicated, because clients are individuals with differing conversational styles who may take different amounts of time to tell their story or may have differing amounts of information to share. Additionally, controlling the amount of speaking time through techniques such as summarizing or asking open questions may inadvertently create an appearance of

asymmetry. Empowerment techniques are typically used to balance power between clients. Ironically, by attempting to create a more symmetrical or level playing field, mediators use asymmetrical treatment to achieve it, and may create a perception of bias in the process. Enforcing ground rules may have a similar consequence, as rarely do both clients violate ground rules in the exact same manner or frequency. Clearly, managing neutrality is a difficult task, and while mediators may make every effort to act symmetrically, the process and clients make it impractical to achieve in its entirety.

Mediators who are transparent reduce their clients' uncertainty by helping them to know what to expect in the mediation process. This increased understanding of expectations can help to alleviate potential concerns when issues (such as asymmetrical storytelling order or empowerment techniques) occur later in the mediation session. Alternatively, in cases in which mediators have been less transparent, an issue such as asymmetrical mediator behavior may result in a client who makes a negative attribution about the mediator's neutrality. Thus, in cases in which mediators have been transparent, if a client encounters asymmetrical mediator behavior, he or she may use a retroactive attribution process that places the mediator's neutrality in a more favorable light. Mediators who are more transparent may be able to manage some of the difficulties arising from putting symmetry into practice. Thus, the following hypothesis is proposed:

H_3: Client perception of mediator transparency will be a stronger predictor of

mediator neutrality than client perception of mediator symmetry.

Client Satisfaction

Overview. As service providers, mediators want to serve their clients in the best way possible. One important outcome of the mediation process is for clients to feel

satisfied with the services they receive. Hecht (1978) explained that most theorists conceptualize satisfaction as a response to the fulfillment of an expectation and that all theorists consider satisfaction as an individual's internal response to his/her environment. Hecht stated that an individual experiences satisfaction when his/her positive expectations are fulfilled. In mediation, therefore, it is expected that clients whose expectations are met will be more satisfied with the mediation process. In addition to examining the mediator's influence on their clients' perception of mediator neutrality, this study also sought to examine the relationship between neutrality and satisfaction with the mediation process, as well as the relationship between potential predictors of neutrality (symmetry and transparency) and satisfaction with the mediation process.

Neutrality and satisfaction.   By the time a client arrives at his/her mediation session, he or she will most likely have heard about mediation from the case manager who scheduled the case, or perhaps will have heard about mediation through a judge, lawyer, or even other lay people. Thus, clients most likely arrive to the mediation center with a basic understanding and expectation that their mediator will be a neutral third party who won't take sides. Additionally, most clients (and people in general) probably have an inherent desire to be treated fairly. As mentioned previously, mediators typically explain and emphasize their neutrality role in the opening statement, and may even refer back to it during the mediation session. Consequently, clients will expect that their mediator will behave in a neutral manner throughout the mediation process. Because satisfaction occurs when an individual's positive expectations are fulfilled, the following hypothesis regarding the relationship between neutrality and satisfaction is proposed:

H₄: Client assessments of mediator neutrality will be positively associated with

client assessments of satisfaction with the mediation process.

Symmetry and satisfaction. Similarly, if mediators explain their role as a

neutral third party who does not take sides and who will treat them equally, clients may

have the expectation that their mediator will treat them symmetrically. Again, if this

expectation is fulfilled, the client will likely feel satisfied. Thus, the next hypothesis is

proposed regarding the relationship between symmetry and satisfaction:

H₅: Client assessments of mediator symmetry will be positively associated with

client assessments of satisfaction with the mediation process.

Transparency and satisfaction. Transparency operates in a different way than

neutrality and symmetry. With neutrality, for example, the client expects that a mediator

will act in a neutral manner, and presumably, the client will feel satisfied if they assess

that to be the case. It is the same case for symmetry: the client expects that a mediator

will treat them symmetrically, and presumably will feel satisfied if they feel the mediator

did treat them that way. Transparency, on the other hand, does not necessarily create the

expectation that a mediator will act in a transparent manner. As used in this study,

transparency captures the idea that mediators provided explanations for past or future

behaviors, rather than the expectation of transparency. However, there is a reason to

believe that transparency (i.e., uncertainty reduction) may also be associated with greater

satisfaction with the mediation process.

Several studies showed that satisfaction of various kinds increases with greater

certainty. For instance, reducing uncertainty during initial interaction is associated with

communication satisfaction. Neuliep and Grohskopf (2000) conducted two experimental

studies that both showed a liner relationship such that the lower the uncertainty in an initial interaction, the higher the level of communication satisfaction. In the first study, dyads who had never met were given eight minutes to discuss any topic they wished. Afterwards, clients completed a questionnaire on interpersonal communication satisfaction and uncertainty. In the second study, the researchers used the same procedure but altered the experiment so that clients had greater motivation and perceived the interaction to be more important. Clients were asked to conduct a job interview and decide whether or not to hire the other individual. Again, the results showed that communication satisfaction was greatest when uncertainty was low, and that communication satisfaction was lowest when uncertainty was high. Thus, it is expected that clients in mediation may be more satisfied with the conversation if their uncertainty is reduced.

While URT was originally developed as an explanation for patterns of communicative behavior that occur when individuals first meet (Berger & Calebrese, 1975), uncertainties exist even in established relationships (Berger, 1997). Planalp and Honeycutt (1985) and Planalp, Rutherford, and Honeycutt (1988) found that when negative events occur, such as finding out that one's partner has cheated, increased uncertainty and reduced relational satisfaction can result. Dainton (2003) found that in romantic relationships, not only was relationship uncertainty a predictor of relationship satisfaction, but it was an even greater predictor than relationship equity.

The relationship between satisfaction and uncertainty has been supported in the organizational setting as well. Salem and Williams (1984) found that increased hospital employee uncertainty was associated with less satisfaction with their supervisor and the

organization. Message uncertainty was measured in terms of *task information* (e.g., "How to actually perform my job"), *human information* (e.g., "How I am being evaluated"), and *maintenance information* (e.g., "Organizational goals and objectives"). Each of the three types of message uncertainty negatively correlated with employee satisfaction with their supervisor and with the organization. However, only human uncertainty correlated with satisfaction with co-workers. Overall, the results showed that in a real situation, a hospital work environment, greater uncertainty was associated with less satisfaction.

Similarly, Diekmann, Barsness and Sondak (2004) conducted an organizational field study at an Internet retailing firm. Their study, however, examined the effects of uncertainty on fairness and job satisfaction. They measured three dimensions of fairness: (a) *procedural*, referring to the decision-making processes, (b) *interactional*, referring to interpersonal treatment, and (c) *distributive*, referring to outcomes. Uncertainty was measured in accordance with the situational nature of the study, which asked questions related to the amount of uncertainty employees felt regarding performance standards and appropriate behaviors. The results of their study showed that overall fairness, procedural fairness, and interactional fairness were positively related to job satisfaction. Additionally, the relationship between fairness and job satisfaction was stronger in individuals who experienced higher levels of uncertainty. Uncertainty could be considered a moderator between the two variables. Although distributive fairness was correlated with job satisfaction, uncertainty was not found to be a moderator in this case.

In mediation, procedural and interactional fairness on the part of the mediator is extremely important to clients. Distributive fairness (i.e., the fairness of the final written

agreement), is also extremely important, but differs from procedural and interactional fairness because the clients have complete control over deciding the content of the agreement. Based on findings from organizational settings, one would expect that in mediation, the higher the perceived procedural and interactional fairness, the more satisfaction with the process clients would have. Furthermore, this relationship would be even more salient in cases of higher uncertainty. Thus, in cases in which mediators are able to provide higher levels of certainty with the process, clients would be less strongly influenced by fairness as a measure of their satisfaction.

Summary of transparency and satisfaction in mediation. Studies showed that uncertainty is a relevant factor in many assessments of satisfaction, whether it is satisfaction with a relational partner, with the conversation in general, with a supervisor, a job, or interpersonally. Uncertainty is also a moderator between fairness and satisfaction. Fairness, a key concept of neutrality, appears to be a greater factor for individuals when their uncertainty is higher. If mediators can reduce clients' uncertainty by being more transparent, and if reduced uncertainty has been associated with greater satisfaction across many contexts, then greater mediator transparency will also be associated with greater client satisfaction with the mediation process. Thus, the final hypothesis was proposed:

H_6: Client assessments of mediator transparency will be positively associated with client assessments of satisfaction with the mediation process.

CHAPTER 2. METHOD

Procedures

Overview. The first step in carrying out the study was to recruit community

mediation centers to serve as research sites. At those sites, most clients were invited to

participate either immediately before or immediately after their mediation session (this

decision was based on the mediators' preference). In a few cases, clients were recruited

by phone and mail within 30 days of their session. Individuals who agreed to participate

in the study went through their mediation process as they otherwise would. After the

mediation session, clients filled out a survey that took approximately 5-10 minutes to

complete. Mediators were also asked to fill out a survey in order to provide case,

demographic, and background information.

The study included data from a total of 35 cases. Each case included data from (a)

one or both clients and (b) zero, one, or both mediators. In cases in which both clients

filled out a survey, their data points were averaged to create a composite score for each of

the key variables. If only one client filled out a survey, then that client's data was used.

With the exception of client demographics and scale reliability, all further references to

the sample (i.e., client data) refers to either (a) the single client from the case or (b) a

composite score of both clients from the case. Thus, although a total of 54 clients filled

out a survey, the sample size of 35 reflects the best estimate of the overall client

perspective for each case. To report client and mediator demographic data, the entire data

set was used. To report non-duplicative case information, one mediator per case was

arbitrarily selected. Further details of these data selection procedures are provided

throughout the remainder of this chapter. Finally, in the instances in which a report of data breakdown totals less than 35, there was missing data.

Recruitment. The researcher contacted the five community mediation centers that are located across four islands in Hawaii to invite them to participate as research sites. Three centers located on the islands of Oahu, Kauai, and the Big Island of Hawaii agreed to serve as research sites. These mediation centers use volunteers who mediate as a team (i.e., use two mediators per case or "co-mediate") and use a facilitative approach. The majority of the clients accessed mediation services at the community mediation center on the island of Oahu (74%, $n = 26$), and the remainder accessed mediation services at a community mediation center on the island of Kauai (11%, $n = 4$) and the Big Island (14%, $n = 5$). The reason that most data comes from Oahu is that (a) the site started collecting data one month earlier than the other sites, and (b) the researcher is located on Oahu and was able to recruit in person there. The entire recruitment period lasted approximately two and a half months.

Clients were invited to participate in the study using several methods. Most clients (91%, $n = 32$) were invited to participate at the time of their mediation (i.e. either immediately before or immediately after their session). On Oahu, either the researcher or a mediator approached the parties to invite them to participate. On Kauai and the Big Island, a mediation center staff member was the initial recruiter. The staff approached the clients either immediately prior to or immediately after their mediation session (depending on the preference of the staff or mediators). To increase sample size on Kauai, clients who had mediated within the last 30 days were contacted by both phone and mail and asked to complete and return a mailed survey 9% ($n = 3$).

Informed consent process. The informed consent process began when the recruiter (i.e. researcher, mediation center staff, or mediator) approached the parties to invite them to participate in the study. The recruiter emphasized that the study was entirely voluntary and anonymous and provided a letter of invitation from the researcher (see Appendix A). The letter of invitation reminded research participants of the confidential nature of the mediation session and instructed them to not provide details of what they discussed in the mediation session. It also gave them an identification code that matched them to their mediators (e.g., Party 1A, Party 1B, Mediator 1A, Mediator 1B). On the reverse side of the letter was a copy of the consent form for participants to keep. The first page of the survey served as the consent form (see Appendix B); clients anonymously indicated their willingness to participate by entering their identification code on the consent form.

Questionnaire completion. Both mediators and clients proceeded through their mediation session as they normally would. After the session, the clients and mediators who agreed to participate each filled out a questionnaire. The letter of invitation instructed the clients to return to the waiting room to fill out their survey.

Initially, mediators were instructed to fill out their survey (and ask their clients to do the same) only one time. This procedure was used to ensure that the sample included unique clients who assessed unique mediators. However, after approximately 30 days of recruitment, client data from only nine cases had been collected. Many mediators had filled out a survey even though their clients had not (these mediator surveys were not used in the present study). At this point, the researcher made a decision to allow mediators to complete the study a 2nd or 3rd time if they were mediating a different case.

In order to track how many times each mediator filled out the survey, the researcher revised the survey to include a new question. This new procedure resulted in a sample of clients (consisting of unique individuals) who assessed a pool of mediators (of which most were unique individuals). In 31 of the 35 cases, one or both mediators filled out a survey. Of the 48 total mediators who filled out a survey, approximately 85% ($n = 41$) filled it out for the first time (either they filled it out prior to the procedure change or reported filling it out for the first time). A few mediators reported filled out the survey a 2nd (10%, $n = 5$) or 3rd (4%, $n = 2$) time.

The client's questionnaire consisted of measures of neutrality, symmetry, transparency, satisfaction, and demographic and background information (see Appendices D-H). The instructions informed them to reflect on their experience with the mediation session, rather than the content of their discussion (see Appendix C). The mediator's questionnaire (see Appendix I and J) measured demographic, background, and non-confidential case information. It also included other questions that will be used to research the mediator's perspective of neutrality and co-mediator interaction.

Description of Mediation Cases

Basic case information. Basic case information was gleaned from the 31 cases in which one or more mediators filled out a survey. In cases in which both mediators filled out a survey, Mediator A (an arbitrary choice) was chosen for use in this part of the analysis to avoid duplicative case information. If only one mediator filled out a survey, then that mediator's data were used. Some data were missing, so in a few of the breakdowns reported, the numbers may add up to slightly less than expected.

The mediation sessions varied in terms of whether or not they were voluntary, the length of the session, the type of case, and the result of the session. Most mediators had a co-mediator (97%, $n = 30$), while 3% mediated alone ($n = 1$). More mediation sessions were voluntary (57%, $n = 17$) than were court-ordered (43%, $n = 13$). The average session length was just under three hours ($M = 2.77$ hours, $SD = .78$), but it ranged from as short as 1 hour to as long as four hours.

The mediators reported that the most frequently occurring case type was "divorce/custody," which occurred in 53% of the cases ($n = 16$). They categorized the rest of the cases as "civil rights" (10%, $n = 3$), "neighbor/neighbor" (7%, $n = 2$), temporary restraining order (7%, $n = 2$), "commercial" (3%, $n = 1$), or "other" (20%, $n = 6$). The "other" category included one each of the following responses: visitation, paternity/visitation, family, family property, foreclosure, and harassment.

At the time of the session, the mediators reported that 52% reached a final agreement ($n = 16$), 23% did not reach an agreement ($n = 7$), 13% scheduled another session ($n = 4$), and 10% reached an interim agreement ($n = 3$). These agreement rates are not the final results of all the cases, however, as these cases were sampled at different points in the process. Specifically, the mediators reported that 73% of the cases were in their first session ($n = 22$), 13% were in their 2nd session ($n = 4$), 10% were in their 3rd session ($n = 3$), and 3% were in their 4th or greater session ($n = 1$). Mediators were asked to give their opinion of the success of the case; 57% of the mediators rated the session as "very successful" ($n = 16$), 29% rated the session as "partially successful" ($n = 8$), and 14% rated the session as "not successful" ($n = 4$).

Mediators. A total of 48 mediators were used in the analysis for the demographic and background information on the mediators. In all but one of the cases, the clients had co-mediators. In the co-mediated cases, both mediators were invited to fill out a survey. For about half of the cases (49%, $n = 17$), both mediators filled out a survey. In 40% of the cases ($n = 14$), only one mediator filled out a survey. In the remaining fourteen percent of the cases ($n = 4$) a mediator did not fill out a survey.

The mediators assigned to the parties were demographically diverse. Their ages ranged from 40 to 86 years ($M = 59.14$, $SD = 10.47$). There were slightly more male mediators (57%, $n = 26$) than female mediators (44%, $n = 20$). In terms of ethnicity, Caucasians (56%, $n = 25$) and Asians (29%, $n = 14$) were the predominant groups. Specifically, the Asian sample included 13% Japanese ($n = 6$), 7% Chinese ($n = 3$), 2% Filipino ($n = 1$) and 9% mixed Asian ($n = 4$). The remainder of the sample consisted of 2% African American ($n = 1$), 2% Native American/Alaskan ($n = 1$), and 9% mixed other ($n = 4$). Most of the mediators who filled out the survey were based on Oahu (77%, $n = 37$); the remainder was based on the Big Island (17%, $n = 8$) and Kauai (6%, $n = 3$).

Mediators reported their approach (e.g. model or philosophy) to mediation. The most common was the facilitative approach (61%, $n = 27$). Twenty-three percent were not sure of their approach ($n = 10$), 7% reported using an evaluative approach ($n = 3$), 2% reported using a transformative approach ($n = 1$), and 7% reported "other" or a combination of approaches ($n = 3$). The community mediation centers teach their volunteers to use the facilitative approach, so it is likely that the 23% who were unsure were actually using a facilitative approach without knowing the terminology.

Mediators also varied in the amount of training they had completed and their level of experience. A forty-hour training is a common basic requirement for mediators in the United States. In this study, most mediators (93%) had received 40 or more hours of training: 41% had more than 100 hours of training ($n = 18$), another 52% received between 40 and 100 hours of training ($n = 23$), and 7% had received less than 40 hours of training ($n = 3$). Forty-nine percent rated themselves as "very experienced" ($n = 21$), 37% rated themselves as "somewhat experienced" ($n = 16$), and 14% rated themselves as "novice" ($n = 6$). The length of time mediating ranged from less than one month to over 28 years ($M = 7.40$, $SD = 6.72$).

Client Sample

In practice, clients in the mediation session are sometimes referred to as clients, disputants, or parties; in this study, they are intended to be synonymous terms. For each case, both of the clients were invited to fill out a survey. For 54% of the cases ($n = 19$), both clients agreed to fill out a survey, while in 46% ($n = 16$) of the cases, only one client agreed to fill out a survey. A total of fifty-four clients completed the survey.

Fifty-three clients were used to describe client demographics (one client did not provide any demographic information). Clients were diverse in demographics such as age, gender, and ethnicity. Their ages ranged from 22 to 78 ($M = 42.94$, $SD = 13.02$). There were slightly more females (55%, $n = 29$) than males (45%, $n = 24$). The sample was ethnically diverse, although Caucasians (35%, $n = 18$) and Asians (32%, $n = 18$) were the predominant groups. Specifically, the Asian sample included 10% Filipino ($n = 5$), 8% Japanese ($n = 4$), 6% Chinese ($n = 3$), 2% Korean ($n = 1$), 2% Thai ($n = 2$), 4% mixed Asian ($n = 2$), and 2% other Asian ($n = 1$). The remainder of the sample consisted

of 8% Native Hawaiian or part Hawaiian, 4% Native American/Alaskan (n = 2), 2% other

Pacific Islander (n = 1), 2% mixed Pacific Islander (n = 1), 2% African American (n = 1),

and 14% mixed other (n = 7).

The sample size used to answer the research question and test the hypotheses for

this study was 35 (equal to the number of cases). This number is lower than the 54

surveys collected from the clients because only one set of data points were used from

each case, and, as described earlier, some cases had more than one client who filled out a

survey. In these cases (in which there were two clients who filled out a survey), the

scores from both clients were averaged to form composite scores. In cases in which there

was only data from one client, that client's scores were included as the data in the sample.

One survey was eliminated from the sample because the data provided were clearly

contradictory (responses to the close-ended scales indicated severe dissatisfaction, while

the open-ended questions were very complimentary of the mediators).

Measures

Overview. The four scales that were developed to measure the key variables in

the study were: neutrality (α = .95), symmetry (α = .95), transparency (α = .79), and

satisfaction (α = .85). Scale reliability was estimated using the entire set of clients (n =

54). Each scale had several statements that clients assessed according to the extent to

which they agreed with each statement on a 7-point scale (1 = *Strongly Disagree, 2 =*

Disagree, 3 = *Slightly Disagree,* 4 = *Neither Agree nor Disagree,* 5 = *Slightly Agree,* 6 =*

Agree, and 7 = *Strongly Agree*). Overall, clients judged their mediators as being neutral

(M = 6.21, SD = .76), as treating them symmetrically, (M = 6.28, SD = .67), and as being

transparent (M = 6.11, SD = .49). Overall, they felt fairly satisfied with the mediation

process (*M* = 5.75, *SD* = .99). See Table 1 for a summary of the psychometric properties

of the key variables in the study.

Table 1

Means, Standard Deviations, Sample Size, and Reliability for Key Variables Measured

	M	*SD*	*n*	*α*
Neutrality	6.21	.76	35	.95
Symmetry	6.28	.67	34	.95
Transparency	6.11	.49	34	.79
Satisfaction	5.75	.99	35	.85

Note. Reliability was estimated using the data from all clients who filled out a survey (*n* = 54), rather than composite scores.

Neutrality. As discussed in the literature review, many scholars and practitioners

use different terminology to describe neutrality. Clients may also have varying

understanding of the term neutrality. Thus, four items were developed that measure

different facets of neutrality that exist in the literature, including taking sides, having

bias, and acting fairly. Several scholars have also suggested that neutrality is not an

absolute term (Bernard et al., 1984; Douglas, 2008; Taylor, 1997) and should be

measured on a continuum rather than as a "yes/no" question (Taylor, 1997; Bernard et al.,

1984). Clients were asked the extent to which they agreed with each of the four

statements about mediator neutrality such as, "The mediators were neutral." Higher

scores indicated that clients perceived their mediator to be more neutral.

Although not part of this thesis, the clients provided their perspective on the

mediators' neutrality in two other formats. First, a semantic differential scale (Osgood,

Suci, & Tannenbaum, 1957) measured clients' attitudes toward different facets of mediator neutrality. Second, clients described specific instances that influenced them to think that their mediators may or may not be neutral. Information provided in these two formats will be used for future analyses.

     Symmetry. There was no established scale that could be appropriately modified for the context-specific setting of a mediation session. Therefore, two elements of symmetry that emerged from the literature review, eliciting stories and empowerment techniques, were used to develop a symmetry scale. Clients were asked the extent to which they agreed with statements about mediator symmetry, e.g., "The mediator treated both parties equally." Higher scores indicate that clients perceive their mediator to have acted more symmetrically (see Appendix E). Overall, clients assessed their mediators as acting symmetrically. The clients responded to two additional symmetry questions regarding storytelling order and speaking time; the responses from these two questions will be used for future analyses.

     Transparency. Transparency in the present study was operationalized as providing an explanation of what can be expected in the mediation process, especially about issues that affect neutrality. There was no established scale to measure transparency in the context-specific setting of a mediation session. Rather, the development of the mediator transparency scale for the present study was influenced by the Perceived Information Adequacy Scale that Sheer and Cline (1995) developed for their study on uncertainty in physician-patient interactions to measure the patient's perception of both the amount of information and its relevance. Sheer and Cline's original scale consisted of eleven items ($\alpha = .95$). Only three of the original questions

were adopted from the Perceived Information Adequacy Scale for the present study, and all were modified to apply to a mediation setting. For example, "I have received enough information about treatment" became "I received enough information about the mediator's role." Five additional questions were added in order to understand the mediator's transparency in the opening statement, or level of explanation provided about issues that affect neutrality (e.g., "The mediators explained why the first person to tell their story went first"). The resulting transparency scale (see Appendix F) consisted of eight statements. Higher scores indicate greater mediator transparency. Overall, clients assessed their mediators as being transparent.

Satisfaction. The developed measure for clients' overall satisfaction with the mediation process was influenced by Hecht's (1978) Interpersonal Communication Satisfaction Inventory (Com-Sat). The aptly named construct, interpersonal communication satisfaction, refers to the satisfaction an individual feels regarding his/her communication with another individual (Hecht, 1978). Interpersonal satisfaction is a process outcome that results from an actual communication encounter, making it an effective assessment of the communicator's attributes or processes that occur during conversations (Hecht, 1978). When the 19-item measure was used for actual conversations, Hecht (1978) reported excellent reliability ($\alpha = .97$). Graham (1994) reported that the Com-Sat inventory has been successfully modified for use in several settings while maintaining sufficient reliability. He also described the scale as useful for measuring satisfaction in both actual and recalled conversations whether it is among friends, acquaintances, or strangers. In order to modify this scale to apply to a mediation setting, one question remained the same (e.g., "We each got to say what we wanted"),

while two questions were altered minimally (e.g., from "I was very satisfied with this conversation" to "I was very satisfied with the mediation session"). The remaining Com-Sat items were omitted because they were not applicable (e.g., "I had something else to do."). Two additional questions were added in regards to client satisfaction with the mediators ("I would choose these mediators again.") and the mediation process ("I found today's mediation session helpful."). The resulting satisfaction scale consists of five statements (see Appendix G).. Higher scores indicate greater satisfaction with the mediation process Overall, clients felt fairly satisfied with the mediation process. Three additional items related to satisfaction with the co-mediation interaction were asked but were intended for use in a separate study.

Demographic and background information. Both the client's and the mediator's questionnaire measured basic demographic information including age, gender, and ethnicity (see Appendix H and J). The mediator's questionnaire measured additional information about the mediator's background, including years of mediation experience, level of mediation training, and approach to mediation (see Appendix J). Basic, non-confidential information about the case was obtained, such as the type of case (e.g., divorce, landlord/tenant), whether the case was voluntary or court-ordered, and whether the clients came to a written agreement (see Appendix I).

CHAPTER 3. RESULTS

Prior to testing the research question and hypotheses, all four key variables were examined to determine whether there were significant differences among the three research sites on Oahu, the Big Island, and Kauai. There were no significant differences based on location for neutrality, $F(2,32) =.08$, $p = .92$, $\eta2 = .01$; symmetry, $F(2,31) =.09$, $p = .92$, $\eta2 = .01$; transparency, $F(2,31) = 2.74$, $p = .08$, $\eta2 = .15$; or satisfaction $F(2,32) =1.26$, $p = .30$, $\eta2 = .07$. See Table 2 for means and standard deviations of all key variables by location.

Table 2

Means and Standard Deviations of Key Variables by Location

		Oahu (n = 26ᵃ)	Big Island (n = 5)	Kauai (n = 4)
Neutrality	*M*	6.25	6.15	6.09
	SD	.81	.79	.43
Symmetry	*M*	6.25	6.35	6.38
	SD	.66	.93	.53
Transparency	*M*	6.19	5.66	6.14
	SD	.43	.75	.12
Satisfaction	*M*	5.80	5.15	6.13
	SD	.93	1.28	1.01

Note. ᵃOn Oahu, the sample size was 26 for the neutrality and satisfaction variables. One client skipped the survey page that assessed symmetry and transparency, so the sample size for these variables on was 25.

Neutrality

Research question one. Before examining potential influences on the clients' perception of mediator neutrality, a research question explored the extent to which mediation clients perceive their mediators to be neutral. To examine this question, descriptive statistics revealed that, on average, clients perceived their mediators to be

neutral ($M = 6.21$, SD $= .76$, $n = 35$). The range was 3.38 - 7.00, the median was 6.25, and the mode was 6.00.

Hypothesis one. The first hypothesis proposed that higher assessments of mediator symmetry would be associated with higher assessments of mediator neutrality. A two-tailed Pearson product-moment correlation was used to test this relationship. The hypothesis was supported; as clients perceived their mediators to behave more symmetrically, they also assessed their mediators as being more neutral, $r(32) = .73$, p <.01. See Table 3 for intercorrelations of all four key variables.

Hypothesis two. The second hypothesis proposed that higher assessments of mediator transparency would be positively associated with higher assessments of mediator neutrality. Again, a two-tailed Pearson product-moment correlation was used to test this relationship. This hypothesis was also supported; as clients perceived their mediators to be more transparent, they also assessed their mediators as more neutral, $r(32) = .41$, $p = .02$.

Hypothesis three. The third hypothesis predicted that clients' assessment of mediator transparency would be a stronger predictor of their assessment of mediator neutrality than their assessment of mediator symmetry. A simple linear regression was used to test this prediction. After determining that all the assumptions of regression (i.e., normal distribution of variables, a linear relationship between independent and dependent variables, reliable scale measurement, and homoscedasticity) were satisfactorily met, both symmetry and transparency were entered into the regression at the same time. This procedure was used because there was no theoretical reason that one should precede the other in the regression. The overall model with symmetry and transparency accounted for

55% of the variance, $R^2 = .74$, $F(2,31) = 19.03$, $p < .01$, but only symmetry was a significant predictor of neutrality. Symmetry significantly predicted client assessment of mediator neutrality, $\beta = .67$, $t = 5.17$, $p < .01$), but transparency did not, $\beta = .16$, $t = 1.26$, $p = .22$. Thus, hypothesis three was not supported. See Table 4 for a regression table.

Satisfaction

     Hypothesis four. The next hypothesis proposed that higher client assessments of mediator neutrality would be associated with higher client assessments of satisfaction with the mediation process. A two-tailed Pearson product-moment correlation was used to test this relationship. This hypothesis was supported; as clients perceived their mediators to be more neutral, they also felt more satisfied with the mediation process, $r(32) = .38$, $p = .02$.

     Hypothesis five. The next hypothesis proposed that higher client assessments of mediator symmetry would be associated with higher client assessments of satisfaction with the mediation process. A two-tailed Pearson product-moment correlation was used to test this relationship. This hypothesis was supported; as clients perceived their mediators to be more symmetrical, they also felt more satisfied with the mediation process, $r(32) = .36$, $p = .04$.

     Hypothesis six. The last hypothesis proposed that higher client assessments of mediator transparency would be associated with higher client assessments of satisfaction with the mediation process. A two-tailed Pearson product-moment correlation was used to test this relationship. The data did not support this hypothesis; clients' assessments of mediator transparency did not significantly predict clients' satisfaction with the mediation process, $r(32) = .20$, $p = .27$.

Table 3

Pearson's Product-Moment Intercorrelation Matrix (Two-tailed tests)

		Neutrality	Symmetry	Transparency	Satisfaction
Neutrality	r	--			
	p				
Symmetry	r	$.73^{**}$	--		
	p	$< .01$			
Transparency	r	$.41^{*}$	$.36^{*}$	--	
	p	$.02$	$.04$		
Satisfaction	r	$.38^{*}$	$.36^{*}$	$.20$	--
	p	$.02$	$.04$	$.27$	

Note. $^{*}p < .05$, $^{**}p < .01$. The sample size was 34 for all correlations except for satisfaction, which had a sample size of 35. One client skipped the survey page that assessed symmetry and transparency.

Table 4

Multiple Regression

	Clients' perception of mediator behavior			
Variable	Model	β	t	p
(Constant)			- .10	.92
Symmetry		.67	5.17	$< .01^{**}$
Transparency		.16	1.26	.22
R^2	.55			
F	19.03 (2,31)			
ΔR^2	.55			
ΔF	19.03			

Note. $^{*}p < .05$, $^{**}p < .01$

CHAPTER 4. DISCUSSION

Neutrality is a central theme in the field of mediation, and it is important to understand what may influence the clients' assessment of their mediators' neutrality. Much of the literature published on neutrality has focused on theoretical perspectives as opposed to empirical research. The few studies that have been conducted have focused on the mediator's perspective, and even fewer have attempted to research the client's perspective. As such, the primary purpose of this study was to examine the much-discussed but rarely researched construct of neutrality from the perspective of the client. This was accomplished by investigating the viewpoints of clients regarding their naturally occurring mediation sessions at community mediation centers.

One of the points of disagreement in the mediation field is whether or not it is actually possible for a mediator to be neutral. In the present study, the use of interval rather than nominal level measurement allowed for a more sensitive test of the clients' perception of mediator neutrality. On average, clients rated their mediators' neutrality quite high, indicating that clients did perceive that their mediators were acting fairly, not taking sides, and without bias. There were, however, cases in which the clients did not fully agree that their mediators were neutral. This variance in the clients' neutrality scores had predictive value in terms of the other key variables in the study (symmetry, transparency, and satisfaction).

The results of the present study are somewhat difficult to compare to Meierding's (1993) study because Meierding's utilized a yes/no question type (nominal level measurement); whereas the present study utilized a Likert-type scale (interval level measurement). However, if the present study were to consider any score on the scale in

which the client agreed or strongly agreed that the mediator was neutral as a "yes" response, then in 83% of the cases, the clients assessed their mediators as neutral. This percentage would be similar to Meierding's findings that 89-95% of the clients in her sample found the mediator to be unbiased. Since Meierding's findings were from a different type of sample (the clients used a private mediator, had reached a final settlement on marital issues, and were voluntary in nature) than the present study, this study provides additional support for the finding that, in general, clients do seem to think that their mediators act in a neutral manner.

This study sought to understand whether symmetry and transparency influences the client in their assessment of mediator neutrality. Symmetry refers to the equal treatment of clients, while transparency refers to providing an explanation of past or future behavior. The results showed that symmetry was positively associated with neutrality and had a large effect size. Transparency was also positively associated with neutrality and had a moderate-to-large effect size. The more clients felt that the mediators had treated them equally, the more they judged that their mediator had acted fairly, without bias, and without taking sides. The more they felt that the mediator had reduced their uncertainty about what might happen in the mediation session, the more they judged their mediators to be neutral. Through regression analysis, symmetry emerged as the sole predictor of neutrality and had a large effect size. Transparency did not emerge as a significant predictor of neutrality in this study.

The study also examined satisfaction with the mediation process. The findings indicated that both neutrality and symmetry were positively associated with satisfaction and had a moderate effect size. Transparency, however, had a small effect size and was

not found to be associated with satisfaction. There are several possible explanations for why this relationship was not found to be significant.

Because transparency had a small effect size, the sample may not have been large enough to adequately test this relationship. One explanation for the small effect size may be that symmetry may be more a proximal cue because it is an actual behavior that they observe, while transparency may be more distal cue because it is providing an explanation of behavior rather than doing the actual behavior. Although the initial predication that transparency would be positively associated with satisfaction was because of a reduction in uncertainty, in retrospect, transparency may only be marginally associated with satisfaction because it may only reduce a small portion of uncertainty in an extremely uncertain situation. A lot of important and life-altering issues may be on the table, such as: Who will get custody? Will I get to keep my house? Will the other person still have a restraining order against me? These types of uncertainties may be so great, that a mediator's explanation of their behavior in mediation (transparency) may only reduce an insignificant amount of their anxiety, and therefore, may lessen the overall effect on satisfaction.

Implications

Implications for practice. The results of the study indicated that symmetry is a strong predictor of clients' assessment of mediator neutrality, and that neutrality and symmetry are associated with client satisfaction. This poses a challenge for mediators, because symmetry, like neutrality, is difficult to enact perfectly. If a mediator's goal is to have clients who believe that they acted in a neutral manner and who walk away feeling

satisfied with the process, mediators may need to develop ways to strive for greater symmetry.

Although difficult, mediators may want to consider paying particular attention to how symmetrical they are acting, and where possible, attempt to behave more symmetrically. For example, mediators could ensure that they ask their opening questions in the same way to each client. Storytelling order is a particularly difficult area to be symmetrical in, because both clients can't tell their story at the same time. Still, there are some options. The party who spoke second could be the first to start after a break midway through the session, or if there is another session scheduled, he or she could be the first to speak at the next scheduled session. Regarding speaking time, it may be impractical to get out a timer and make sure that each client has the same number of minutes of speaking time during the first caucus. A more reasonable approach might be to ensure that there isn't a great time imbalance. Perhaps the clients would not mind if the mediator spoke with one party for 10 minutes during a caucus and the other for 15 minutes, but greater time differences might raise suspicion. This all may sound exasperating to the mediator, who may feel that he or she already acts in a neutral manner, and has a difficult enough job already. However, this study proposes that client perception is important, and symmetry does appear to be related to the clients' perception of mediator neutrality. Behavior often reflects an underlying attitude, so mediation trainings may need to address not only the concept of behaving in a symmetrical manner, but also the underlying issues that may cause asymmetrical behavior. When mediators both feel and act symmetrically to both clients, they may achieve more success in their role as a neutral third party.

Although symmetry had a stronger relationship with neutrality than did transparency, the relationship between transparency and neutrality was nevertheless a positive association. The more that mediators reduced their clients' uncertainty by explaining their role and their expectation for behavior (by explaining that sometimes one person may talk longer than the other and that caucusing may occur, and in general, cleared some doubt about what will happen in the mediation session), the more neutral clients assessed them to be. This study was a first step in understanding the relationship of symmetry, transparency, and neutrality. Mediators may need to utilize symmetry and transparency in tandem in order to be perceived as neutral. For example, in cases in which perfect symmetry will be difficult, providing an explanation for why that may happen may also affect the client's perception that the mediator is still acting in a neutral manner.

Implications for research. This study examined the clients' perspective in mediation, which is a viewpoint that is difficult to find in academic journals. Mediations are private and confidential, so gaining access to invite clients to participate is difficult. Even with this access, though, data collection is challenging. Researchers should probably be aware of the difficulty of acquiring client data in order to thoughtfully develop effective recruitment procedures before launching a study.

The fact that the recruitment message had to pass through many people before finally reaching the client is a good example to illustrate this point. In the present study, the first recruitment step was for the researcher to contact the community mediation centers and invite them to serve as research sites. Second, the mediation center sent out an email to all volunteer mediators to inform them of the study and to let them know to

expect that they would have a research study packet in their case file when they arrived. Third, the mediators would arrive at the mediation center, read (perhaps) through the packet, and decide whether or not to help with the study. The mediation center staff also would remind the mediators about the study. Fourth, after completing the mediation session, the mediators invited their clients to participate in the study. Any breaks in this recruitment process resulted in a missed opportunity because the client was never even asked to participate. Some staff members did not talk to the mediators or the clients about the study, and some mediators did not ask the clients to participate. This recruitment chain was, overall, rather unsuccessful.

Consequently, the procedures were modified partway through the study. Whenever time and schedule allowed, the researcher came to the primary research site to personally invite the mediators and clients to participate. Although time consuming, this procedure was more effective. Even so, only about half of those clients who agreed to participate actually turned in a survey. Mediation can be an exhausting process, and even if individuals intend to participate, they may easily change their minds at the end of a very long mediation session.

As another example, the issue of repeat mediators arose as an unexpected difficulty during the recruitment process. Mediators were initially asked to fill out the survey only one time, so that the clients (who were the sample) would be assessing different mediators. However, many mediators were unsuccessful at or unwilling to recruit clients to participate in the study. This may be understandable since mediators were serving as volunteers, may have found the role of neutral third party and recruiter contradictory, may have felt uncomfortable being evaluated by their clients, or may not

have wanted to burden their clients with a survey after a long mediation session. As a result, many mediators filled out a survey, but there were no client data tied to it. This created a situation in which the limited number of mediators who volunteer at the community mediation center had already filled out a survey and had been instructed to do so only once, but only minimal client data were collected. This issue was a major contributor to the small sample size.

These are just two examples that are intended to raise awareness to other researchers of the inherent difficulty and complicated task of researching the clients' perspective in naturally-occurring mediation sessions. Participant incentives may make the process easier, but they may also complicate the process further. Recruiter incentives, on the other hand, may be an effective option. One thing to keep in mind is that asking a mediation center staff member or volunteer to recruit for a research study is something above and beyond their normal job/volunteer description. For this study, recruitment was most successful when the researcher herself was able to recruit participants. Certainly the investigator of a study will have high motivation to recruit, but this may have been a result of being both an insider (a volunteer mediator) and an outsider (not the mediator in the case). Whether it is a researcher, research assistant, or mediation center staff member who recruits, someone who fully understands the study procedures and is effective at and motivated to recruit participants is essential for success. Where possible, simplified procedures, adequate recruiter training, and periodic procedure checks will all help to ensure that data collection is working properly.

Limitations

Although the study produced helpful findings for the field of mediation, some cautions are in order. Clearly, the sample size of 35 was a limitation to the study. The study was underpowered to test small to moderate effect sizes. This was a problem when using regression to test the relationship between transparency and neutrality, as well as when using correlation to test the relationship between transparency and satisfaction. More participants would have created a more stable sample, making individual variations less likely in the analyses.

There were two types of selection bias in this study. The first bias in the sample was the selection of the research sites and the type of mediators and cases that are mediated there. The study involved a sampling of clients who accessed mediation services primarily from volunteer co-mediators using a facilitative approach at community mediation centers located in Hawaii. This inhibits the generalizability of the results to other populations such as mediators who are in private practice, who solo-mediate, who mediate at court, or who use a different approach, such as transformative or evaluative. Future studies that sample different populations utilizing different kinds of mediation services would make a contribution to this area of research.

The second selection bias was that the characteristics of the clients who completed the study may have been different than those who did not participate in the study. The study was entirely voluntary and no incentives were offered to participate. The actual rate of return is unknown due to the multiple procedures and research sites used to collect data, but suffice it to say, it was quite low. Mediators and staff members may have been reluctant to ask parties who seemed more difficult, upset, or less satisfied with the

mediation process or outcome. As a result, clients who were more willing to help others or were more satisfied with the process may have completed disproportionately more surveys. Overall, clients in the study reported feeling fairly satisfied with the mediation process, and in only a few of the cases did clients report feeling slightly unsatisfied. Those clients who were dissatisfied with the process may have been less inclined to fill out the survey. An additional concern is that clients who were lower in socio-economic status may have been less inclined to participate if the wording on the consent form and survey appeared lengthy and difficult. Future research should consider how recruitment procedures may inadvertently create a biased sample.

Some of the methods used in this study are a limitation. There were no generally accepted measures of neutrality, symmetry, transparency, and satisfaction that were easily adaptable to the context of this study. No relevant scale existed for neutrality and symmetry scales, so the scale items for these measures were developed through concepts that emerged in the literature review. There were established scales that influenced the transparency and satisfaction scales, but most of the original items had to be cut and new items were added. For future research, the scales should be tested for validity and re-tested for reliability. These scales were quite short – ranging from four to eight items. In the process of scale development, many items were cut and modified to reduce survey length and keep the reading level low. For example, the word "impartiality," a key word used in the mediation community, was removed from the scale upon recommendation from mediation center staff that some clients might not understand the meaning.

Finally, there were some missing data. Although there were clear instructions with liberal use of large font size, underline, and bold, not everyone read the instructions.

Procedures had to be put in place, such as color-coding the surveys and adding large labels. One client accidently filled out a mediator survey. Another skipped an entire page of the survey, which, unfortunately, was the page that had the transparency and symmetry scales. Others skipped the demographic information. In another case, some data points were excluded from the analysis because the closed-ended responses did not make logical sense when compared to the open-ended responses. In the future, it would also help to have someone double check the surveys for completion when they were turned in.

Future Directions

As this study is one of only a few that researched the clients' perspective in mediation, there are many options for future research. This study used a survey method to collect data on actual clients' perceptions. To continue a survey methodology, future studies could compare the clients' assessment of the mediators' neutrality, the mediators' self-assessment, and the co-mediator's assessment to find out whether these assessments differ. A comparison between the mediator and client's assessments of the importance of neutrality could also be made. Open-ended questions that ask the clients to recall any situations that influenced their opinion of whether or not their mediator was neutral might also prove insightful. Testing a path model to better understand the specific effects of symmetry and transparency on neutrality and neutrality's effect on satisfaction may also yield helpful information. Understanding ways in which effective mediators successfully act in a symmetrical or transparent manner would be interesting as well. Transparency, for instance, is likely a double-edged sword and begs several questions. For example, could transparency backfire if a client doesn't agree with the mediator's explanation of behavior? How do mediators balance the need for transparency with restrictions on their

role (such as not being able to provide legal information or advice)? This inability to fully disclose information may affect clients' perception of mediator transparency and neutrality.

This study examined the relationship between neutrality and satisfaction, but there are other near- and long-term neutrality mediation outcomes that might be associated with neutrality. For instance, neutrality could be related to whether clients felt as though their communication with each other had improved, whether they came to an agreement, or if they were able to follow their agreement over time. While in the present study the researcher purposefully sampled a variety of cases to increase generalizeability, restricting the sample to a specific type of case may also be advantageous. The dynamics of certain types of cases may be such that symmetry and transparency have a different relationship with neutrality, and clients may even view neutrality itself differently.

The addition of other methodologies may provide more breadth to the understanding of neutrality. For example, an outside observer might be able to provide a less biased assessment of the mediators' neutrality. Pairing the client data with outside observer data would be beneficial to understand whether clients' perception of themselves differs. However, due to the confidential nature of mediation, an outside observer might create an even greater access issue. Mediators and clients may not act naturally with someone observing them. Another similar option would be to videotape the sessions and then code for behaviors, but this methodology would also create greater access barriers. Alternatively, future research could employ a lab study in which there were a control group and experimental groups in which mediators received additional training in symmetry or transparency. This kind of study might be able to demonstrate a

causal effect between symmetry and/or transparency and assessments of neutrality. Finally, any of these types of studies could also be extended to a more diverse population – samples could be taken from private mediators, different geographical areas, those who use different approaches, different types of cases, or those who mediate by themselves rather than as a team.

This study found that, in general, mediation clients (to the extent that this sample is generalizeable) assessed their mediators as acting in a neutral manner. To better understand what influences a client in cases in which he or she believes that their mediators might not be neutral, a specific sample of unsatisfied clients might be helpful. If the present study's findings are correct (that most mediators are good at acting neutrally), then analyzing a sample of complaint cases to find out if these complaints were related to neutrality may be useful. Surveying or interviewing these unsatisfied clients might reveal interesting findings.

Conclusion

Despite a small sample size, the study had significant and interesting findings. When clients perceived that their mediators had treating them more equally, they also assessed that their mediators had acted in a more neutral manner and felt more satisfied with the mediation process. When clients perceived that their mediators offered more complete explanations of what to expect in the mediation session, they also assessed their mediators as acting in a more neutral manner. Symmetry appeared to be more salient factor in clients' assessment of mediator neutrality than transparency.

This study is one of only a few empirical research studies that investigated the clients' perspective of mediator neutrality. This is important because neutrality is a

central theme in the field of mediation, and mediators must not only act neutrally, but also be perceived by their clients as acting neutrally. On average, the clients in the sample did perceive that their mediators had acted in a neutral manner. This could indicate that neutrality is not a sweeping problem in the field; alternatively, it could simply reflect a bias in this study's sample of clients who were fairly satisfied. In light of the fact that neutrality is considered by many to be a central component of the role of the mediator, the fact that some clients did believe that their mediators could have improved on their neutrality may still indicate that neutrality is a concept worth investigating further. Future research efforts utilizing multiple methodologies could help the field of mediation to better understand what influences a client in their assessment of their mediator's neutrality.

Letter of Invitation

Hello!

My name is Keri Fehrenbach. I am a volunteer mediator and a graduate student at the University of Hawaii. For my thesis project, I am researching the mediation process.

I would like to invite you to participate in my study.

The survey is entirely voluntary and confidential (your mediators and the other party will not see your responses).

It will take about 5-10 minutes to complete the survey. I really appreciate your time!

Please keep this letter for your records. On the reverse side is a copy of the consent form, where you'll find my contact information should you have any questions.

Mahalo,

Keri Fehrenbach

Here's how to participate:

- Read the consent form on the first page of your survey to find out more about the study.

⬇

If you decide to participate:
- Enter your identification code on the first page of your survey.
- This identification code will take the place of your signature. That way, I will be able to match your responses to the mediators' responses, but everyone will remain anonymous.

ID CODE:

⬇

- Fill out your survey.
- It should take you about 5-10 minutes.

⬇

- Seal your survey in the envelope and hand it to the receptionist at the front desk.
- Your survey will remain anonymous.

APPENDIX B

Agreement to Participate in Mediation Study

This study is a thesis research project being conducted by a graduate student in the Department of Speech at the University of Hawaii. The purpose of the study is to develop a better understanding of the mediation process.

Participation in this research project is completely <u>voluntary</u>. You are free to withdraw from participation at any time during the duration of the project with no penalty, or loss of benefit to which you would otherwise be entitled.

Approximately 50-100 individuals will participate in the study. Participation in the study consists of filling out a survey that asks you questions about the mediation session you just completed. Completion of the survey will take approximately <u>5-10 minutes</u>.

You will not be asked to provide any specific information about your case, and your mediator(s) will not see your responses. No personal identifying information will be included with the research results. Research data will be confidential to the extent allowed by law. Agencies with research oversight, such as the UH Committee on Human Studies, have the authority to review research data.

The investigator believes there is little or no risk to participating in this research project. Participating in this research may be of no direct benefit to you.

If you have any questions regarding this research project, please contact the investigator, Keri Fehrenbach, at (808) 956-3318 or kerifeh@hawaii.edu. If you have any questions regarding your rights as a research participant, please contact the UH Committee on Human Studies at (808)956-5007, or uhirb@hawaii.edu.

If you would like to participate:		**If you do NOT want to participate:**
• Read the above consent form • To consent, fill in the code (provided on the researcher's invitation letter) • Fill out the survey	Enter Code Here	• Do not enter your code • Do not fill out the survey • Place the survey in the envelope and hand it to the receptionist

APPENDIX C

Client Survey: General Instructions

Thank you so much for participating in my study!

As you fill out the survey, please keep in mind:
- The purpose of this survey is to investigate your reactions to the mediation session you just had.
- Many of the questions will ask you about your mediators' performance.
- Since you had two mediators, please think of their performance as a unit.
- Your mediators will not see any of your responses to these questions.

APPENDIX D

Client Survey: Items Assessing Perspective of Mediator Neutrality

Clients' Perspective of Mediator Neutrality
$\alpha = .95$

1. The mediators were neutral.
2. The mediators did not take sides.
3. The mediators acted fairly.
4. The mediators did not have any bias.

Note. All items were measured on a 7-point Likert-type scale (1 = *Strongly Disagree*, 2 = *Disagree*, 3 = *Slightly Disagree*, 4 = *Neither Agree or Disagree*, 5 = *Slightly Agree*, 6 = *Agree*, and 7 = *Strongly Agree*). The instructions provided were: "Please circle a number from 1-7 to indicate the extent to which you agree or disagree with each statement."

Client Survey: Items Assessing Perspective of Mediator Symmetry

Clients' Perspective of Mediator Symmetrical Behavior
α = .94

1. The mediators treated both parties equally.
2. The mediators allowed me to tell my perspective just as fully as they allowed the other party to tell his/her perspective.
3. The mediator helped me just as much as the other party.
4. The mediator responded to how I was feeling just as much as they responded to the other party's feelings.

Note. All items were measured on a 7-point Likert-type scale (1 = *Strongly Disagree*, 2 = *Disagree*, 3 = *Slightly Disagree*, 4 = *Neither Agree or Disagree*, 5 = *Slightly Agree*, 6 = *Agree*, and 7 = *Strongly Agree*). The instructions provided were: "Please circle a number from 1-7 to indicate the extent to which you agree or disagree with each statement."

Client Survey: Items Assessing Mediator Transparency

Original Items Perceived Information Adequacy Scale	Modified/Additional Item $\alpha = .94$
1. I have received sufficient information.	1. I received sufficient information about what would happen in the mediation process.
2. I have received enough information about treatment.	2. I have received enough information about the mediator's role.
3. What the doctor told me cleared my doubt about the illness.	3. What the mediator told me cleared my doubt about what would happen in mediation.
4. The information I got is what I came for.	
5. I fully understand the diagnosis the doctor gave me.	
6. I have not received a specific diagnosis.	
7. The doctor gave me too little information about my health condition.	
8. The doctor answered all my questions.	
9. All the information the doctor gave me is relevant to me.	
10. I have not received enough information from the doctor.	
11. I still need more explanation from the doctor about the prescription he/she gave me.	
	4. The mediators explained why the first person to tell their story went first.
	5. I was aware that the mediators might talk with one of us longer than the other.*
	6. The mediators explained what they expected in terms of appropriate behavior.
	7. The mediator explained that each of us might meet with him/her separately.
	8. The mediator helped me to know what to expect.

Notes. All items were measured on a 7-point Likert-type scale (1 = *Strongly Disagree*, 2 = *Disagree*, 3 = *Slightly Disagree*, 4 = *Neither Agree or Disagree*, 5 = *Slightly Agree*, 6 = *Agree*, and 7 = *Strongly Agree*). The instructions provided were: "Please circle a number from 1-7 to indicate the extent to which you agree or disagree with each statement."
* Item removed to improve reliability.

APPENDIX G

Client Survey: Items Assessing Satisfaction

Original Items Com-Sat Scale	Modified/Additional Item $\alpha = .85$
1. We each got to say what we wanted.	1. We each got to say what we wanted.
2. Nothing was accomplished.	2. We accomplished a lot.
3. I was very satisfied with the conversation.	3. I was very satisfied with the mediation session.
4. I felt that during the conversation I was able to present myself as I wanted the other person to view me.	
5. I would like to have another conversation like this one.	
6. The other person showed me that he/she understood what I said.	
7. The other person let me know that I was communicating effectively.	
8. The other person genuinely wanted to get to know me.	
9. I was very *dis*satisfied with the conversation.	
10. I had something else to do.	
11. I felt that during the conversation I was able to present myself as I wanted the other person to view me.	
12. The other person expressed a lot of interest in what I had to say.	
13. I did not enjoy the conversation.	
14. The other person did *not* provide support for what he/she was saying.	
15. I felt I could talk about anything with the other person.	
16. I felt that we could laugh easily together.	
17. The conversation flowed smoothly.	
18. The other person changed the topic when hs/her feelings were brought into the conversation.	

19. We talked about something I was *not* interested in.	
	4. I found today's mediation session helpful.
	5. I would choose these mediators again.

Note. All items were measured on a 7-point Likert-type scale (1 = *Strongly Disagree*, 2 = *Disagree*, 3 = *Slightly Disagree*, 4 = *Neither Agree or Disagree*, 5 = *Slightly Agree*, 6 = *Agree*, and 7 = *Strongly Agree*). The instructions provided were: "Please circle a number from 1-7 to indicate the extent to which you agree or disagree with each statement."

APPENDIX H

Client Survey: Demographic Information

1. How old are you? Fill in number of years: _____

2. What is your gender? Check the appropriate box: □ Male □ Female

3. Please select <u>one</u> of the following racial categories that best describes yourself:

Asian	Pacific Islander	Other
□ Chinese	□ Guamanian or Chamorro	□ African-American or Black
□ Filipino	□ Native Hawaiian or Part-Hawaiian	□ Caucasian or White
□ Indian	□ Micronesian	□ American Indian or Alaskan Native
□ Japanese	□ Samoan	□ Mixed other
□ Korean	□ Tongan	
□ Laotian	□ Other Pacific Islander	
□ Thai	□ Mixed Pacific Islander	
□ Vietnamese		
□ Other Asian		
□ Mixed Asian		

Note: The instructions provide were: "Please tell us some demographic information about yourself."

APPENDIX I

Mediator Survey: Case Information

1. What was the number of the session?
   ☐ First session
   ☐ Second session
   ☐ Third session
   ☐ Fourth or greater session

2. How long did the session last? _____Hours_____ Minutes

3. What was the type of case?
   ☐ Divorce/custody
   ☐ Landlord/tenant
   ☐ Neighbor/neighbor
   ☐ Employment
   ☐ Civil rights
   ☐ Condominium
   ☐ Commercial
   ☐ Other_____

4. Was the case voluntary or court-ordered?
   ☐ Voluntary
   ☐ Court-ordered

5. What was the result of the mediation session?
   ☐ Final agreement
   ☐ Interim agreement
   ☐ No agreement
   ☐ Scheduled another session
   ☐ Other_____

6. In your opinion, how successful was the mediation?
   ☐ Very successful
   ☐ Partially successful
   ☐ Not successful

Note: The instructions provided were: "Please provide some information about the mediation case."

APPENDIX J

Mediator's Survey: Demographic and Background Information

1. How many years have you been mediating? Fill in number of years:_____

2. What is your experience level?
    ☐ Novice
    ☐ Somewhat experienced
    ☐ Very experienced

3. What is your level of mediation training?
    ☐ Less than 40 hours
    ☐ 40-100 hours
    ☐ 100+ hours

4. What approach or model of mediation did you use?
    ☐ Transformative
    ☐ Facilitative
    ☐ Evaluative
    ☐ Other: _____
    ☐ I am not sure

5. How old are you? Fill in number of years: _____

6. What is your gender? Check the appropriate box: ☐ Male ☐ Female

7. Please select <u>one</u> of the following racial categories that best describes yourself:

Asian		Pacific Islander	Other
☐ Chinese	☐ Laotian	☐ Guamanian or Chamorro	☐ African-American or Black
☐ Filipino	☐ Thai	☐ Native Hawaiian or Part-Hawaiian	☐ Caucasian or White
☐ Indian	☐ Vietnamese	☐ Micronesian	☐ American Indian or Alaskan Native
☐ Japanese	☐ Other Asian	☐ Samoan	☐ Mixed other
☐ Korean	☐ Mixed Asian	☐ Tongan	
		☐ Other Pacific Islander	
		☐ Mixed Pacific Islander	

Note. The instructions provided were: "Please provide some demographic information about yourself."

REFERENCES

Association for Conflict Resolution. (2005). Model standards of conduct for mediators. Washington, D.C.: Association for Conflict Resolution.

Berger, C. R. (1997). Message production under uncertainty. In G. Philipsen, & T. L. Albrecht (Eds.), *Developing communication theories* (pp. 29-56). Albany: State University of New York Press.

Berger, C. R., & Calabrese, R. J. (1975). Some explorations in initial interaction and beyond: Toward a developmental theory of interpersonal communication. *Human Communication Research, 1*(2), 99-112.

Bernard, S. E., Folger, J. P., Weingarten, H. R., & Zumeta, Z. R. (1984). The neutral mediator: Value dilemmas in divorce mediation. *Conflict Resolution Quarterly, 1984*(4), 61-74.

Boulle, L., & Teh, H. H. (2000). *Mediation: Principles and practice* (Singapore ed.). Singapore: Butterworths Asia.

Cloke, K. (1994). *Mediation: Revenge and the magic of forgiveness*. Santa Monica: Center for Dispute Resolution.

Cobb, S., & Rifkin, J. (1991). Practice and paradox: Deconstructing neutrality in mediation. *Law and Social Inquiry, 16*(1), 35-62.

Dainton, M. (2003). Equity and uncertainty in relational maintenance. *Western Journal of Communication, 67*(2), 164 - 186.

Diekman, K. A., Barsness, Z. I., & Sondak, H. (2004). Uncertainty, fairness perceptions, and job satisfaction: A field study. *Social Justice Research, 17*(3), 237-255.

Domenici, K. & Littlejohn, S. (2001). *Mediation: Empowerment in conflict management.* Prospect Heights, IL: Waveland Press, Inc.

Donohue, W. A. (1989). Communication competence in mediators. In K. Kressel & D.G. Pruitt (Eds.). Mediation research: The process and effectiveness of third-party intervention (pp. 322-343). San Francisco: Jossey-Bass.

Douglas, S. (2008). Neutrality in mediation: A study of mediator perceptions. *Queensland University of Technology Law and Justice Journal, 8*(1), 139-157.

Feer, M. (1992). On "Toward a new discourse for mediation: A critique of neutrality" (MQ 9:2). *Mediation Quarterly, 10*(2), 173-177.

Fuller, R. M., Kimsey, Bell, W. D., & McKinney, B. C. (1992). Mediator neutrality and storytelling order. *Mediation Quarterly, 10*(2), 187-192.

Garcia, A. C., Vise, K., & Whitaker, S. P. (2004). Disputing neutrality: A case study of bias complaint during mediation. *Conflict Resolution Quarterly, 20*(2), 205-230.

Gibson, K. (1999). Mediator attitudes toward outcomes: A philosophical view. *Mediation Quarterly, 17*(2), 197-211.

Gibson, K., Thompson, L., & Bazerman, M. (1996). Shortcomings of neutrality in mediation: Solutions based on rationality. *Negotiation Journal, 12*(1), 69-80.

Graham, E. E. (1994). Interpersonal communication satisfaction inventory. In R. B. Rubin, P. Palmgreen, & H. E. Sypher (Eds.), C*ommunication research measures: A sourcebook* (pp. 217-222). New York, New York: The Guilford Press.

Hale, C. L., & Nix, C. (1997). Achieving neutrality and impartiality: The ultimate communication challenge for peer mediators. *Mediation Quarterly, 14*(4), 337-352.

Hecht, M. L. (1978). The conceptualization and measurement of interpersonal

    communication satisfaction. *Human Communication Research, 4*(3), 253-264.

Heisterkamp, B. L. (2006). Taking the footing of a neutral mediator. *Conflict Resolution*

    Quarterly, 23(3), 301-315.

Kimsey, W. D., Fuller, R. M., Bell, A. J., & McKinney, B. C. (1994). The impact of

    mediator strategic choices: An experimental study. *Mediation Quarterly, 12*(1),

    89-97.

McCorkle, S. (2005). The murky world of mediation ethics: Neutrality, impartiality, and

    conflict of interest in state codes of conduct. *Conflict Resolution Quarterly, 23*(2),

    165-183.

McCorkle, S., & Reese, M. (2005). *Mediation theory and practice*. Boston:

    Pearson/Allyn and Bacon.

Meierding, N. R. (1993). Does mediation work? A survey of long-term satisfaction and

    durability rates for privately mediated agreements. *Mediation Quarterly, 11*(2),

    157-170.

Moore, C. (2003). *The mediation process: Practical strategies for resolving conflict.* San

    Francisco, CA: Jossey-Bass.

Neuliep, J. W., & Grohskopf, E. L. (2000). Uncertainty reduction and communication

    satisfaction during initial interaction: An initial test and replication of a new

    axiom. *Communication Reports, 13*(2), 66-77.

Osgood, C., Suci, G. J. & Tannenbaum, P. (1957). The measurement of meaning. Urbana,

    IL: University of Illinois Press.

Planalp, S., & Honeycutt, J. M. (1985). Events that increase uncertainty in personal

    relationships. *Human Communication Research, 11*, 593-604.

Planalp, S., Rutherford, D. K., & Honeycutt, J. M. (1988). Events that increase

    uncertainty in personal relationships II: Replication and extension. *Human*

    Communication Research, 14(4), 516-547.

Rifkin, J., Millen, J., & Cobb, S. (1991). Toward a new discourse for mediation: A

    critique of neutrality. *Conflict Resolution Quarterly, 9*(2), 151-164.

Salem, P., & Williams, M. L. (1984). Uncertainty and satisfaction: The importance of

    information in hospital communication. *Journal of Applied Communication*

    Research, 12(2), 75-89.

Sheer, V. C. & Cline, R. J. (1995). Testing a model of perceived information adequacy

    and uncertainty reduction in physician-patient interactions. *Journal of Applied*

    Communication Research, 23(1), 44 – 59.

Taylor, A. (1997). Concepts of neutrality in family mediation: Contexts, ethics, influence,

    and transformative process. *Mediation Quarterly, 14*(3), 215-235.