

How Mediation Works: Resolving Conflict through Talk
Angela Cora Garcia (2019)

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Garcia's book on *How Mediation Works: Resolving Conflict through Talk* uses an ethnomethodologically driven conversation analytic approach to study the interaction between mediators and disputants. Each of the book's nine chapters adopts clearly illustrative approaches to show how mediation is used to resolve conflict in small claims and divorce mediation sessions in the United States. This is achieved through an exploration of the techniques used by mediators to help disputants tell their stories, make and respond to complaints and accusations and come up with ideas for resolving disputes. By analysing these mediation sessions, the author shows how a mediator's techniques in the sessions impact on the experience and responses of disputants, demonstrating that these techniques can empower disputants, maximize disputants' autonomy and display a mediator's neutrality. However, as the author states, the organisation of talk in mediation may also work against these goals. The book is the first to use conversation analysis to study how mediation works and how mediators can best help disputants.

The mediation hearings examined by Garcia were videotaped in the 1980s, 1990s and at the turn of the new century (2012). Multisession divorce and family mediation sessions and small claims mediation hearings were retrieved from a

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Western US state and from the Mid-West. The author also collected and observed divorce mediation sessions facilitated by a professional mediator in 2012 to evaluate the extent to which the approach to mediation used at this time is similar to that used during the 1980s and mid-1990s. A constant observation across the various time-span for data collection is that if disputants are unable to resolve disputes through mediation, which is private and cost-effective, the mediators become arbitrators and decide for them (p. 18). This has the advantage over litigation. Thus, the author states that the goal of mediation is to de-emphasise the adversarial nature of the disputants' situations and encourage cooperation and compromise (p. 23).

The introductory chapter traces 'Approaches to Mediation' by considering the roots and varieties of mediation. It introduces the reader to the theoretical perspective and analytical approaches adopted for the study, and describes mediation, its history and the several mediation formats in use in the United States and other countries around the world. In reviewing previous literature, the author investigates the effectiveness and fairness of mediation and describes the type of mediation adopted in the study as being 'facilitative', as opposed to narrative and transformative models. The data corpus and analyses reveal that mediators use the facilitative model because it gives individual disputants (referred to as Complainant and Respondent) interactional autonomy and self-direction within the sessions. The chapter describes opening sessions that set the ground rules for gathering information (p. 5) and engages on how the interactional approach to the study of mediation results in the balancing of power between disputants. This perspective extends and expands on prior investigations which work to understand mediation as an interactional process. Thus, Garcia shows how the work being done by mediators to facilitate the creation of agreement between disputing parties is done through an interactional organisation that supports the goals and constraints of mediation. The author further explores how disputants cooperate with and resist the efforts of the mediators. As the sessions are facilitated, mediators' sanctions increase or impede the goals of disputant autonomy and mediators' neutrality in the dispute resolution process. The interactional organisation of mediation creates opportunities for dispute resolution at the same time as it provides for problematic actions, such as mediators' bias, the exercise of power over disputants, and resistance of disputants to mediators' attempts to facilitate the session fairly. An important point to note here is that although the author examines how participants do mediation work, attention is not focused on whether the participants reach a decision. This lends credence to the methodological dictate of conversation analysis, an approach within the social sciences which pays close attention to how speech actions are performed in

various interactional contexts. Conversation analysis, however, neglects the participants' psychological/mental state and avoids making assertive positions as to whether participants' interactional goals are achieved (Sidnell, 2010).

The second chapter considers the openings, turn-taking system, participation framework and interactional organisation of mediation sessions. The author compares divorce mediation session openings with small claims session openings and finds some differences in the opening stage. The differences occur due to the number of mediators present in each mediation type, the number of sessions required to resolve the disputes and the need for continued communication after the end of the divorce proceedings, especially for couples with small children. The author emphasises that in facilitative mediation programs, mediators are not expected to offer substantive suggestions (p. 35). This reflects in the turn-taking and participation framework observed in the sessions. Most often, mediator sanctions display mediators' orientation to the speech-exchange system of the encounters. Mediators sanction participants for self-selecting, talking persistently on unproductive topics and arguing. The participation framework also shows when participants can contribute to the ongoing interaction. As described in the third chapter, mediators' goals to achieve a properly organised interaction ties closely with how they 'Minimize and Manage Argumentative Talk'. Here, the author gives particular attention to the phenomenon of 'disputing', and the chapter x-rays disputants' direct address and the emergence of arguing, as well as mediator responses to emerging arguments. The interactional organisation of mediation, as organised by the mediator, minimises arguing by separating accusations and denials and providing selective responses to accusations. It also achieves the mitigation of accusations and denials. The mitigation techniques to downgrade accusations include third person attributions of blame, elision of agent, displacement of agent and mitigation of accusations. The emergence of argument is managed through disputants' self-exit from brief argumentative exchanges and mediator-assisted exit. Mediator responses to emerging arguments include minimal responses and topic shifts, strategic interruptions, questions and sanctions, deflection from arguments and focus on facts.

In the fourth chapter, Garcia explores the practice of soliciting the first disputant's opening statement and shows how these strong opening statements are facilitated and constructed with minimal mediator intervention. It examines the notion of 'pre-emptive moves', the interactional implications of soliciting the second disputant's opening statement and the phenomenon of 'going second'. These strong openings are constructed through stories or narratives, quotes and reported speech. Such opening statements lead to what is described in Chapter 5 as 'Mediator Representation of Disputants' Positions', where the author discusses

how mediator representation of the disputants' positions are done through paraphrases, summaries, upshots, revoicing and replacement of the opposing disputant. These strategies reveal the main advantages of mediation over other forms of conflict resolution, which is the autonomy it provides disputants.

Chapter 6 examines how proposals are solicited for the purpose of resolving dispute. Here, specific attention is paid to the general and specific solicits of disputant proposals. The chapter also examines the practice of resisting mediator solicits, how proposal solicits are pursued and recycled, as well as proposal solicitation in divorce mediation. It shows that disputants sometimes also resist mediator solicits.

Chapter 7 discusses the production of proposals for the resolution of disputes. It examines disputants' ideas for resolution as 'position reports', assessing how mediators present ideas for resolution as 'suggestions' in divorce mediation. The author shows that both mediators and disputants produce and respond to these ideas for resolution of issues under dispute. Mediators formulate their ideas as suggestions rather than as position reports to enable them to contribute to the process of proposal production while displaying an orientation to disputant autonomy. Mediators offer proposals and display neutrality. The concept of 'hybrid exchanges' is elucidated (p. 186). Hybrid format of conversation in divorce mediation involves segments of the talk involving a quasi-conversational speech-exchange system rather than the typical mediation format. It involves questions, topic redirects or minimal responses.

In Chapter 8, the author's allusion to the concept of 'Mediator Teamwork' refers to the alignment between co-mediators, as well as the ways of creating and displaying this alignment. Mediation programs may choose to use teams of mediators rather than single mediators for several reasons, including the need for mediators to balance their skills and knowledge while assisting one another to facilitate the interaction. The author describes situations in which mediation teams' performances are maintained during extended verbal exchanges. These maintenance techniques include silence, explicit negotiation, expressions of agreement, paraphrases, sentence completions, 'and-prefaces' and complementary actions. The categories of failures of alignment between comediators include activity misalignment and interactional misalignment.

In the last chapter, Garcia explores the issue of autonomy, empowerment and neutrality in divorce and small claims mediation. Presenting a summary of findings, Garcia examines the implications of autonomy, empowerment and neutrality for mediation practice, and provides suggestions for further research. The chapter shows that the interactional competence of both mediators and

disputants is critical for the successful completion of the mediation session, regardless of whether or not an agreement is reached. Mediation sessions may result in mutually agreeable resolutions and improve the relationship or communication patterns between disputants, but this is not always the case. The summary of findings states that the speech exchange system of mediation in small claims mediations always involves a request by the mediator for the disputants not to address each other but the mediator. Thus, it involves a series of alternating two-party exchanges between the mediator and each disputant individually, with the mediator acting as liaison between the opposing disputants.

In summary, the book presents a compelling read, especially for linguists, mediation practitioners and others who may be interested in how mediation sessions work in some parts of the United States and beyond. Its strengths lie in the observational, aptly illustrated and longitudinal character of the data corpus and presentation of analyses. The data, which were collected over a period of thirty years, shows the constant and divergent processes involved in mediation sessions across a wide time span, making the results more verifiable and scientific. The approach to data collection fits adequately with the methodological dictates of conversation analysis, which is presented as scientific, notation-based and rigorously focused on participants' orientations to speech situations. Although conversation analysis has discipline-based terminologies and highly technical words and expressions such as 'turn-taking', 'action' and 'sequence' (Sidnell and Stivers, 2013), the author's writing style is reader-friendly, as cushioning is provided for most of the technical terms in conversation analysis. The aptly described notion of power play between mediators and disputants also implies that the presence of deontic authority in professional/client interactions is somewhat universal (Boluwaduro, 2021), showing how these interactions are successfully organised despite the differences in power. However, the book has an organisational weakness. The discussions in Chapter 4, which focuses on disputants' opening statements, could have aligned more properly as a follow-up to the arguments in Chapter 2 which starts to describe the interactional organisation of mediation. The author may have organised the chapters this way to justify why argumentative talk is minimised at the different stages of the mediation sessions before proceeding to describe these various stages. Nevertheless, the author has significantly bridged the knowledge gap by showing, using the conversation analysis approach, how conflict is resolved in small claims and divorce mediation sessions in the United States.

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