

INVESTIGATION OF THE PERCEPTION OF
APOLOGY ON MEDIATION OUTCOMES
AS ASSESSED IN A POPULATION OF
EARLY SETTLEMENT, COURT AND
OTHER-REFERRED CASES

By

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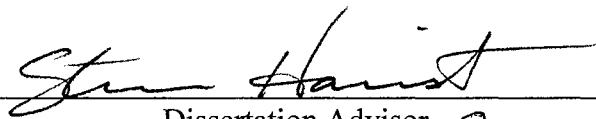
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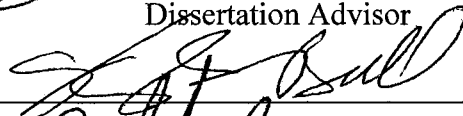
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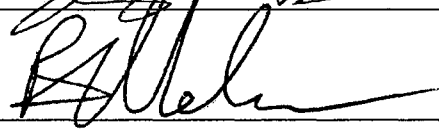
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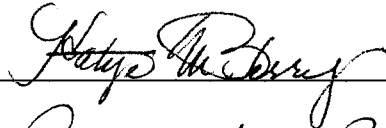
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PREFACE

This study was conducted to provide new knowledge and potential discoveries for the field of conflict resolution, particularly to the burgeoning field of Alternative Dispute Resolution (ADR.). Because human beings cannot exist in a world free of conflict, it is imperative that new and better ways to understand one another be explored. Because human beings are complex and in need of a measure of homeostasis to provide balance, equilibrium and stability in daily life in order to be whole and healthy contributors to society, the study of conciliatory effort and its companion facets, could assist in providing information which could well serve the goal of helping achieve that balance and creating more well-adjusted citizens. Investigation of the role of apology in reconciliation, forgiveness and dispute resolution brings with it a plethora of opportunity to discover just what it is within the human species which cries out for recognition, sense of value, mutual understanding. Ultimately, it brings with it the opportunity to empower self and others while navigating through life, a journey of which it can be said, is merely a series of negotiations.

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TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION.....	1
Introduction	1
Mediation.....	3
Apology	9
Statement of the Problem	11
Purpose of the Study.....	12
Significance of the Study.....	14
Definition of Terms	16
Assumptions	19
Limitations.....	20
II. REVIEW OF RELATED LITERATURE.....	22
Introduction	22
Conflict	22
Etiology of Conflict.....	25
Conflict and Social Systems	26
Components of Conflict.....	32
Structural and Relational Factors	33
Responses to Conflict	35
Variables Impacting Conflict Outcomes	36
Category I: Linguistics, Speech-Act Theory and Language Philosophy.....	37
The Speech-Act Model	37
Category II: Social Psychology	44
Social Psychology: A Brief Overview.....	44
The Social Psychological Study of Conflict: An Historical View	45
Field Theory	46
Human Needs Theory	48
Contemporary Themes in Social Psychological Conflict Research	52
Category III: Justice and the Legal Arena	57
Justice: A Classical View	64
Justice: Contemporary Views	68
Equity Theory and Justice	73
Injustice	75
Retributive vs. Reparative Justice	78
Therapeutic Jurisprudence.....	82

Chapter	Page
Category IV: Conflict Resolution Research	84
Historical Overview.....	84
Power	88
Conflict Resolution Methods and Strategies	90
Alternative Dispute Resolution (ADR)	90
Mediation.....	92
Problem-Solving Model	94
Transformative Mediation	96
Communication	97
Conflict: Resolution, Management or Transformation?.....	100
Peace, Justice and Conflict	102
Apology	103
Criteria for Apology	106
Perception	110
 III. METHODOLOGY	 112
Research Hypotheses	113
Participants	114
Mediating Party Questionnaire Survey.....	117
Informed Consent	121
Instrument Validity.....	122
Preliminary Procedures.....	123
Instrument Reliability	123
Pilot Studies.....	123
Data Collection Preparation.....	124
Preliminary Procedures.....	124
Operational Procedure	128
Data Collection Procedure.....	128
Third-Party Breach of Confidentiality.....	129
Confidentiality	132
Research Design and Statistical Analysis.....	132
Regression Analysis	132
Pearson Product-Moment Correlation	134
<i>t</i> -test	134
Assumptions	135
Analysis of Variance	135
Canonical Correlation.....	136
Statistical Analysis	137

Chapter	Page
IV. RESULTS	142
Reliability Analysis	143
Statistical Analysis	147
Regression Analysis	148
Pearson Product-moment Correlation	150
<i>t</i> -test	151
<i>t</i> -test	152
Analysis of Variance (ANOVA)	154
Analysis of Variance (ANOVA)	156
Canonical Correlation.....	157
V. DISCUSSION.....	160
Implications for Theory and Mediators.....	179
Limitations of the Study	182
Future Research	184
REFERENCES	187
APPENDIXES.....	210
APPENDIX A – INITIAL PETITION LETTER.....	210
APPENDIX B – SUPREME COURT OF OKLAHOMA APPROVAL LETTER	212
APPENDIX C – DISPUTE RESOLUTION ADVISORY BOARD PROCEDURAL OUTLINE	213
APPENDIX D – MEDICATION USER SURVEY FORM (FOLLOW-UP SURVEY TO BE COMPLETED BY PARTY).....	216
APPENDIX E – ADDITIONAL QUESTION ADDED TO FOLLOW-UP SURVEY	217
APPENDIX F – EXPLANATION OF RESEARCH STUDY.....	218
APPENDIX G – VERBAL CONSENT TO PARTICIPATE FORM.....	220
APPENDIX H – MEDIATING PARTY QUESTIONNAIRE (QUESTIONNAIRE SURVEY INSTRUMENT).....	221
APPENDIX I – INSTITUTIONAL REVIEW BOARD APPROVAL	228

Chapter	Page
APPENDIX J – RULE 10-RULES AND PROCEDURES FOR THE DISPUTE RESOLUTION ACT.....	229
APPENDIX K – STATE STATUTE 1805—CONFIDENTIALITY OF PROCEEDINGS-DISCLOSURE-CIVIL LIABILITY WAIVER OF PRIVILEGE	232

LIST OF TABLES

Table	Page
1. Variables Index.....	140
2. Frequency Table	144
3. Regression Analysis of Apology and Satisfaction with Mediation Process.....	148
4. Coefficients for Regression Analysis of Apology and Satisfaction with Mediation Process.....	149
5. Pairwise <i>t</i> -test Values for Apology and Satisfaction with Mediation Process	151
6. Analysis of Variance (ANOVA) for Effect of Apology on Relationship	155
7. Means and Critical Range Values for Post Hoc Analysis of Apology and Improved Relationship	155
8. Analysis of Variance (ANOVA) for Apology and Importance of Improved Relationship.....	156
9. Means and Critical Range Values for Post Hoc Analysis of Apology and Importance of Improved Relationship.....	157
10. Canonical Variate Significance Values for Apology and Affective Outcomes Criteria	159
11. Covariance Matrix of R Values for Dependent and Independent Variables of Apology and Affective Outcomes Criteria.....	159

LIST OF FIGURES

Figure	Page
1. Sender-Message-Channel-Receiver (SMCR)..... Communication Model	98
2. Regression Slope: Analysis of Apology and Satisfaction with Mediation Process ..	149

CHAPTER I

Introduction

Conflict is a natural part of social reality and Edwards (1999) contends that social order is always just a temporary balance of competing interests. In general, conflict requires resolution. Jadallah (2001) comments that conflict resolution is such a broad field, it has been broadened even further by embracing other disciplines, such as human relations, law, psychology, sociology, mathematics and game theory. Even so, although there was a plethora of information on conflict resolution research, limited research exists on the role of apology in mediation outcomes. (Allport, 1960) notes that few empirical studies have been done to measure the effectiveness of conflict outcomes, and Cross (2003) notes that little quantitative research exists to measure outcomes at all, much less the effectiveness of them. What literature was available tended to fall into four categories: 1) linguistics, speech act theory and language philosophy (Abadi, 1990; Ambady, Koo, Lee & Rosenthal, 1996; Austin, 1961, 1962; Bach, 1994, 2003; Bach & Harnish, 1979; Searle & Vanderveken, 1985), 2) law, specifically, therapeutic jurisprudence and restorative justice (Alter, 1999; Bradford, 2002; Cavanaugh, 1998; Cohen, 1999, 2002b; Kurki, 2000; Lande, 1997, 2000; Menkel-Meadow, 1991, 1995a, 1995b, 2000, 2001), 3) social psychology (Burton, 1979, 1990a, 1990b, 1997, 2003; Deutsch, 2002; Engel-Merry, 1987; Goffman, 1956, 1967, 1971; Lewin, 1931a, 1931b,

1948, 1951a; Maslow, 1943, 1954, 1971; Schlenker & Darby, 1981), and 4) conflict resolution and negotiation research (Burgess, G. & Burgess, H., 1997; Burton & Dukes, 1990; Bush, 1996a, 1996b; Bush & Folger, 1994; Cohen, 2002a, 2002b; Della Noce, 1999, 2002; Deutsch, 1949a, 1949b, 1973, 1983, 1985, 1988, 1990; Deutsch & Coleman (Eds.) 2000; Engel, 2002; Lamb, 1998a, 1998b; Lazare, 1995a, 1995b, Lederach, 1999; Lewin, 1948, 1951a; Mayer, 1987, 2000; Schneider, 1995, 2000a, 2000b). Linguistics, speech act theory and language philosophy tend to describe apology as a single act of speech, without regard to meaning or intent (Austin, 1961, 1962; Black, 1969). The legal profession often regards it as a liability and a possible obstruction to justice (Cohen, 2002b). Social psychology has the propensity to regard it as a way to address basic human needs and human relations (Burton, 1990b, 2003; Goffman, 1971), while conflict negotiation and research theorists and practitioners apply it to problem-solving and transformation (Bush & Folger, 1994; Kelman, (1961, 1990; Lamb, 1997; Lazare, 1995a, 1995b, 2000, 2002; Lederach, 1995, 1997; Schneider, 1995, 2000a).

It is important to recognize that conflict is not all bad (Jadallah, 2001; Mayer, 2000). Although conflict might imply something intractable, negative and confusing, it is important to realize the benefits that conflict and its resolution afford. Successful resolution of conflict can expand or raise levels of consciousness, according to Bush and Folger (1994), and give individuals an opportunity to rise to their potential. Successful resolution of conflict provides results in terms of improved inter and intra-personal relationships, and ability to relate in a positive, productive way with one another. In fact, many benefits can result, the least of which is the fostering of increased communication between disputants, which results in the exchange of ideas and concepts,

and creates a new, shared understanding of each other and the issues, in terms of positions, needs and interests (Jadallah, 2001; Walker, et.al., 1994). For a better understanding of positions, needs and interests, see Definition of Terms later in this chapter. Conflict becomes a negative force when it becomes violent. And there are many forms of violence: verbal (i.e. insults, derogatory comments), road rage, domestic (i.e. abandonment, psychological, physical abuse), suicide, war and genocide. As Jadallah posits, there are certain kinds of violence which cannot and should not be tolerated and which must be addressed. Logically, for as many types of conflicts existing, there are numerous ways to go about resolving them. The alternative dispute resolution method of mediation is one option.

Mediation

The mediation field began evolving around the concept of "conflict resolution," which encouraged theoreticians and practitioners to begin the study of conflict development (Lederach, 1989). Conceptual changes in any field necessarily initiate changes and/or development of new terminology. When the term conflict resolution is used, it typically has a negative connotation, implying that conflict is destructive and needs to be ended, because it actually could be something undesirable (Edwards, 1999). Thus, the use of the word, resolution, did not adequately address the concept that conflict might be ongoing. Conflict management was the evolving concept introduced in the field, then, and it more accurately represented the lasting nature of conflict, suggesting that conflict develops along certain patterns that can be predicted (Rosenberg, 1999). This

theory is inadequate, however, since we often cannot predict and direct human behavior (Hall, 1982). Transformation then, became a term, which began gaining more and more support in the mediation community, according to Lederach (1989). According to Lederach, this word does not imply control, but the possibility of influencing the parties' perceptions and expressions of their conflicts. Bush and Folger (1994) would later expand this concept into an entire mediation model.

Several theories concerning conflict and its resolution sprang out of the aforementioned categories of literature. One of the most prominent theories, a precursor to the theoretical study of conflict resolution and one applicable to the mediation process is Field Theory (Lewin, 1951a). Kurt Lewin was one of the most influential social psychologists of our time. He said that human behavior at any given time is determined by the total number of psychological facts being experienced at that time. All of those facts make up the person's life space (Hergenhahn & Olsen, 1997). Some of those psychological facts will exert a positive influence on the person's behavior and some a negative influence. A change in any psychological fact rearranges the entire life space, thus making the causes of behavioral changes dynamic. A change in any one of them affects all of the others. By definition, the information-gathering phase of mediation is designed to collect or add information to what has already been presented. Field Theory is applicable here because new psychological facts are continually being added during the mediation process. According to Lewin, this dynamic would affect or change all of the other aspects of the person's perception (Lewin, 1951a). Lewin's Conflict Theory, as described by Heckhausen (1991) states that 'a conflict is to be characterized psychologically as a situation in which oppositely directed, simultaneously acting forces

of approximately equal strength work upon the individual' (p.86). Heckhausen further asserts [that under] certain conditions, the cognitive aspects of an individual's present state can arouse a motivation or influence an existing one" (p.33). By its nature, conflict stimulates cognition and motivation and parties bring to mediation the results of such. It follows then, that both the process and the outcomes of mediation are influenced by these factors.

When conflicts occur between groups or individuals, successful resolution of them may bring many benefits. The ways these conflicts may be resolved, however, tend to be restrictive or limited (Bush & Folger, 1994). Conciliation, negotiation, arbitration or mediation are modes of choice. Conciliation is an informal process, not requiring that the parties meet, and wherein the mediator acts as a go-between for the parties. Conciliation merely needs a conciliator with the courage to attempt resolution. No permission is needed to try. "Nothing ventured, nothing gained" (Walker, et.al., 1994, p. 8). Negotiation is part of the process of attempted conciliation, arbitration and mediation. It is not a third-party intervention, but a step toward resolution, and "the most common form of dispute resolution" (Center for Democracy and Governance, 1999). Arbitration, on the other hand, can take many forms, which will be outlined and described in more detail in the Chapter II, Review of Literature. It is generally a third-party, non-neutral process whereby the arbitrator meets with the parties in a face-to face meeting and renders a decision based upon facts presented by the parties and their witnesses (Walker, et. al., 1994). Mediation brings parties together in mutual consent for a face-to face meeting thus adding a "level of consent" to conciliation (Walker, et. al., 1994, p. 7). It requires a neutral third party. Mediation provides that. Della Noce (2002) describes

mediation as a social process in which a third party helps individuals who are in conflict, sort out their differences and understand their respective situations better. It began to develop as distinct social institution in the United States during the labor disputes of the nineteenth century and burgeoned in the 1970's (Della Noce, 2002, Walker, et.al., 1994). Various programs became available all over the United States and ranged from rent-a-judge plans and mini-trials to such community forms as dispute resolution programs, prosecutors' programs and neighborhood justice centers (Walker, et.al, 1994). All, both public and private were established and organized to help reduce the strife and conflict in people's lives.

Two primary models of mediation will be discussed: The Problem-Solving Approach and the Transformative Model. Bush and Folger (1994) brought to the forefront the Transformative model of mediation, to challenge the long-held belief that the alternate, most widely-held belief in the Problem-Solving approach, was not in itself complete, and in fact, verged on inadequate to handle the conflictual needs of an evolving society. Fundamentally, the goal of the problem-solving approach is to arrive at an agreement to the immediate conflict at hand, often at the expense of overlooking the inherent nature of conflict to transform human beings through heightened self-awareness and consciousness-raising. Folger and Bush (1994) posit that mediation is an effective way of organizing individuals around a common interest, thereby empowering them to obtain social justice, limit exploitation and gain confidence to solve future conflicts. This is directly congruent with several theories of justice, including Social Justice Theory, and an element of the Problem-Solving mediation model. Bush and Folger contend, however, that this is an incomplete model. By helping parties to solve problems on their own,

mediation reduces the dependency of a lower power group (Bush & Folger, 1994). The primary goal of Transformative mediation then, is to foster the parties' empowerment and recognition, the two key elements of this model, thereby enabling them to approach the issue at hand, as well as future problems, with a stronger, more open view. A greater understanding of others and their problems is present, indicating that consciousness has been raised, and self-worth has been elevated through having a more confident outlook toward solving future conflicts.

A variety of variables impact the mediation process, no matter the model of mediation used. Such variables include the type of conflict at hand, whether it concerns a tangible or intangible concern, how many issues need to be addressed, time constraints such as upcoming court dates, the degree of commitment which each party brings to the table, differences in power balance, which are affected by gender, socio-economic status, level of literacy, what position each party holds in terms of rank, ethnic biases and of course, mediator biases. Further, ability to use appropriate communication skills on the part of the parties and the mediator greatly impacts the mediation process.

Although several theories of communication exist and might be applicable to the study of apology and mediation outcomes, two models will be discussed as they relate to this study. The Sender-Message-Channel-Receiver (SMCR) developed by Flanigan (1992) and the Non-Violent Communication (NVC), proposed and developed by Rosenberg (1999). SMCR addresses the relationship between the offender and the offended in terms of the motivation of the apology-sender and the message outcomes, while NVC relates more to form and languaging of communication, which is both conducive to the Transformative mediation model, and able to enhance, through

linguaging, the SMCR approach. According to Rosenberg, the purpose of nonviolent communication is to strengthen our ability to respond compassionately to others and to ourselves. These models will be discussed further in Chapter II. Davis (1989) describes effective mediators as having respect for the parties, which can be shown in a variety of ways, such as polite behavior, attentive listening, patience and acceptance. An even more powerful mediator characteristic in terms of efficacy is a positive attitude toward conflict itself and an emphasis on its potential for rejuvenation. Nonviolent communication skills are built upon Rosenberg's (1999) applications of it and are comprised of a four-component model, which would assist the mediator to accomplish this.

In the process of conducting and facilitating mediations this researcher has observed the mediating parties to exhibit attitudes which often were not conducive to the process of the mediation. These attitudes manifested themselves in behaviors, which appeared to inhibit the parties in terms of reaching a mutually acceptable resolution, one of the goals of mediation. These observations led to questions concerning what brought the parties to the mediating table in the first place, and why they were willing to attempt participation in such a process. Often, the information-gathering phase of the mediation process was the most arduous for the participating parties because of various emotional ties they seemed to have to the issues at hand. It appeared that there was an underlying or even ancillary reason for the parties coming to the mediation table, other than what was initially stated by them, respectively. For instance, the initiating party might declare that the only possible solution was monetary compensation. However, the languaging of the problem and the surrounding feelings about it belied those declarations, and in fact, reflected intense feelings of having been betrayed, hurt or otherwise wronged in some

way--a way in which financial compensation would not or could not suffice, such as loss of self esteem or sense of identity. Thus, another question arose: Would an apology have any effect on the mediation outcome?

Apology

Apology involves the acknowledgement of injury, with an acceptance of responsibility and with affect (feelings of regret or shame), which is extended with sincerity and without excuses (Schneider, 1995, 2000a, 200b). According to Schneider (2000a), apology is central to mediation because the mediation process regularly involves disputes in which one party feels injured or wronged by another in some way.

Surprisingly, considering the adversarial nature of the legal system and the conciliatory nature of apology, the legal field contributed the most literature pertaining to apologies and their meaning, within the context of the mediation process, especially in terms of therapeutic jurisprudence and restorative justice. Therapeutic jurisprudence focuses on how the law impacts a client's emotional and psychological well-being, and regards the law as a social force capable of producing either therapeutic or anti-therapeutic consequences (Wexler & Winick, 1991; Cavanaugh, 1998; Wexler, 2003). Widely hailed as therapeutic in victim-offender mediations, it was identified as a major trend in the state courts in 1997 (Cavanaugh, 1998). The intent of restorative justice is to "empower and help bring victims to closure, to impress upon the offender that their behavior impacts others, and to promote restitution to victims and the community" (Wexler & Winick, 1991, p.8).

Observation of sincere apologies being made by the respondents to the initiators' claims against them, either directly or indirectly, seemed to help create an atmosphere wherein a process of conciliation or even reconciliation, began to occur (Schneider, 1995). The apology seemed to open lines of communication, providing a deeper level of information-gathering, which was not previously present. This researcher's observations have been congruent with those of Schneider. An apology or even the perception that one occurred, often seemed to make it possible for the initiating parties to respond with apologies of their own. After apologies were made the mediation process appeared to be shortened and enabled the parties to arrive at mutually acceptable agreements wherein both seemed more content, empowered and psychologically secure with their agreements. An apology is an act that is neither about problem-solving or negotiation. Rather, it is a form of ritual exchange where words are spoken which may facilitate closure. It is a "speech...expressing regret" (Tavuchis, as quoted by Schneider, 2000a). In the language of transformative mediation apology serves as an opportunity for acknowledgement which may transform relations (Schneider, 2000a, 2000b).

The literature showed that there is an appropriate way to apologize, and that when that technique is utilized the apology can serve as an instrument which not only helps repair damage done, but helps make conciliation and even reconciliation possible (Lazare, 1995b). According to Wagatsuma and Rosett (1986), some injuries cannot be repaired by saying that one is sorry, but other types of injuries can *only* be repaired that way. Schneider (2000a) asserts that apologies repair damage done.

People can genuinely apologize in mediation, but they often need help to get beyond the blaming and defensiveness that usually precludes an apology. The act of

apologizing involves the exchange of power and shame and as such, is a form of non-coercive, power-balancing enacted by parties wherein "the powerful offer their vulnerability and through recognition, the humiliated are empowered" (Schneider, 2000a, p. 271.) An apology cannot be imposed or manipulated into happening. It is a moment of opportunity, and because it involves such vulnerability the parties often need preparation and help with the words. Sometimes, the only safe way for that to happen is with the assistance and safety of the mediator (Schneider, 2000a).

Statement of the Problem

The observations mentioned above led to the important question of whether or not the perception of an apology having occurred during mediation could be a significant factor in mediation outcomes. What seemed sparse in the literature of alternative dispute resolution, specifically mediation and apology, was the lack of research concerning the effect, if any, apology, a non-violent communication act, had on mediation outcomes. Folger and Jones (1994) note that "central to the communicative perspective is the realization that conflict is a socially created and communicatively managed reality occurring within a socio-historical context that both affects meaning and behavior and is affected by it" (p. ix). This statement reflects, among other things, the importance of the mediator in the mediation process as well as the effect of communicative acts, such as the extension of an apology.

Purpose of the Study

A review of the literature has revealed that there is a deficit of empirical information concerning the role of apology in Alternative Dispute Resolution, specifically that of apology and mediation outcomes. The primary purpose of this study, therefore, is to determine whether an apology occurring during the mediation process affects mediation outcomes. Affective mediation outcome variables measured within this study include, a) improved relationship between mediating parties, b) improved self-esteem, c) sense of justice in the mediation outcome, d) sense of fairness of the mediation outcome, e) sense of personal empowerment, and f) overall satisfaction with the mediation process. The criteria for apology variables measured within this study are a) acknowledgment, b) recognition, c) responsibility, d) affective response and e) willingness to make amends.

Many times the insistence of the initiating party on having an apology from the respondent in order to soothe injuries, real or perceived, makes mediating the issue difficult, at best. The enormous cost of missed apologies in terms of money, resources and lives lost is a major factor to be considered. Finding that an apology makes a difference for the better would encourage more research into more effective ways to teach, educate and train mediators, and those of various other professions and disciplines, to resolve conflict more effectively using acquirable and user-friendly skills. These could be structured in such a manner that education of parties occurs within the mediation session, without being directive or obtrusive. Since Schneider (2000a, 2000b) observed that sincere apologies had the power to either directly or indirectly create an atmosphere

wherein conciliation and even reconciliation could come about, then trained mediators, with the skill to create that safe atmosphere, would be a tremendous asset. The apology seemed to open lines of communication, providing a deeper level of information gathering, which was not previously present. An actual apology or even the perception that an apology occurred often brought the mediations to closure more rapidly and left the parties with a measure of respect for one another, thus assisting them in creating agreements with which they were more content, felt more empowered by psychologically and in which they were far more emotionally invested in seeing to fruition. Teaching mediators to think more globally and in terms of a more transformational approach, not just in technique or theoretical orientation to the Transformative model, but in terms of helping people change *from within*, also aims to help parties be recognized and empowered and thus enabled to solve future problems on their own, or with minimal assistance. This is cost effective both monetarily and emotionally. Aiming those skills at creating an atmosphere where it is safe to admit that injury has been done could only facilitate peaceful resolution to conflicts, wherein the healing process could begin. An apology is an opportunity to say, in a sense, "Yes, there has been a terrible wound here, for which I am truly sorry. My intention is not to destroy you. [We may not be able to resolve this to the satisfaction of us both,] but I would like to close this door gently, not slam it shut" Schneider, 2000a, p. 279). In divorce and family mediation, in particular, this would be immeasurably helpful in the healing process for the families involved, and more especially for the children. More well-adjusted children grow into more well-adjusted adults, a large benefit to society as a whole. In terms of national and international conflict resolution, ownership of responsibility for wrongs done could

facilitate willingness to make reparations, which in turn, would lead to peace-building, not violence, war and civil unrest.

Several socio-cultural aspects impact whether an apology might be made and help describe its surrounding dynamics, including religious beliefs, power balance, vulnerability, group identification and one's theory of justice. That perception of justice could include retribution, reparation, reconciliation or revenge. Should an apology be made several outcomes might be possible, such as improved self-esteem, sense of empowerment and confidence in solving future conflicts, better sense of justice and fairness of the mediation outcomes and an increased satisfaction with the mediation process itself.

Significance of the Study

The findings in this study are of great significance to the field of mediation and conflict resolution for several reasons. Indicating that an apology affects mediation outcomes, as well as disputants, in a positive and productive way, practical benefits, as well as far-reaching consequences exist. Practically speaking, if an apology shortens the length of time spent in actual mediation the court docket could be greatly affected in terms of time spent in the actual court room. If mediations are shortened by apology (or any other reason for that matter) then literally, there would be more time in the courtroom for more cases to be heard, and those who have been forced to take time off from work would be sooner freed to return, thereby affecting job productivity and employer/employee relationships. When agreements are reached it is less likely that

further litigation will occur, again shortening the dockets. Further, since the nature of mediation is to give parties an opportunity to voice concerns and emotions prior to going to court in hopes of reaching a pre-court settlement, then time spent in mediation would facilitate less time being spent in the courtroom with parties attempting to interject less factual information, which is most often disallowed by a judge. Judges repeatedly have offered anecdotal data substantiating the benefits of mediation in terms of more peaceful encounters with and between the clients in the courtroom, as the parties tend to be less agitated, emotional and unclear about the issues which brought them there. These reports have indicated that actual time in adjudication is significantly lessened. In short, mediation removes much of the rancor from the parties thus making adjudication faster and easier, even when a mutually agreeable settlement has not been arrived at in mediation. A beneficial circular arrangement occurs.

If an apology affects mediation outcomes in terms of increased self-esteem, a perception that justice was served could be a result. It then follows that there might be more satisfaction with the overall mediation process, with fewer cases ending up in court. Since the transformative nature of conflict heightens awareness, helps develop moral character and affords opportunities for empowerment to resolve any future altercations or disagreements, this study would help contribute to a more global and comprehensive understanding of how to resolve conflict, and would assist in training mediators to perhaps acquire skills with which to facilitate the occurrence of apology. Chupp (1993) asserts that there is transformation inherent in all conflict and that this transformation is a spiritual one, which goes beyond mere settlement of a dispute, to the defining a person's internal needs and root causes of the conflict. Should efforts be made to educate both

mediators and disputing parties about the value of the apology and on the skills needed to facilitate as well as to offer it, several transformative outcomes might be possible: Peace-building would occur, and in that would come a better quality of life, both physically and spiritually, for all involved. And out of that transformation could come a new awareness of what caused the conflict to begin with, what it takes to resolve it and equally if not more important, what it takes to prevent it.

Definition of Terms

Acknowledgment and recognition will be used in conjunction with each other and defined as "a greater openness to and acceptance of the problems of others (Bush & Folger, 1994) or the "acknowledgment and empathy for the situation and problems of others" (Bush & Folger, 1994, p. 2).

Affective outcomes of mediation: These are to include improved self-esteem, having a sense of empowerment (ability to solve future conflicts), getting emotional closure to the issue(s) which brought the mediation about, belief that the mediation outcome was affected in terms of justice and fairness, sense of improved relationship with the other party to the mediation, and overall satisfaction with the mediation process.

Alternative Dispute Resolution: A method of resolving disputes other than through litigation. The particular type of mediation used in this study refers to the Early Settlement Mediation Program of Oklahoma.

Apology: For the purpose of this study the term apology will be considered to be any effort, actual or implied, verbal or non-verbal, which the party or parties interviewed deem to be apologetic or perceive to be so.

Arbitration: Form of alternative dispute resolution wherein the mediator acts as judge.

Basic Mediation: Mediations involving a variety of issues, which include cases typically heard in Small Claims court. This type of mediation does not involve family and/or divorce matters.

Conciliation: Informal process, not requiring a meeting of parties, and where the mediator acts as a go-between for the parties.

Conflict: A process in which one party perceives that its interests are being opposed or negatively affected by another party.

Criteria for apology: 1) Acknowledgment of an offense/wrong done, 2) recognition of *what* the wrong was which was done, 3) responsibility (willingness to take responsibility for the offense/misdeed), 4) affective response (such as regret, sincerity, remorse, desire for forgiveness), and 5) amends (willingness and understanding of the need to make reparations).

Empowerment is defined herein as an "enhanced...feeling of control over one's life" (Engle-Merry, S., & Milner, N., 1993, p.16), and "the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems" (Bush & Folger, 1994, p. 2).

Family and Divorce mediation: A type of mediation involving families in crisis, contemplating or going through divorce, and issues revolving around those

circumstances. Some of these include the division of assets and property, alimony, child support and child custody issues. This type of Oklahoma Early Settlement mediation requires that the mediator be state-certified.

IDEA Mediation: Mediations involving the Individuals with Disabilities in Education Act. This type of Oklahoma Early Settlement mediation requires that the mediator be state-certified.

Interests: The negotiable things people want or are asking for in a conflict, usually of a material nature.

Mediation: A value-neutral process of dispute resolution and alternative to litigation focused on effective communication, negotiation, the mutual consent of the parties involved, and disputant equality. The mediator acts as the neutral third-party facilitator.

Needs: The intangible things people want in a conflict, such as security, identity and recognition, which are usually non-negotiable.

Negotiation: Any form of communication between disputant wherein they discuss options and solutions to solve their dispute out of court.

Non-violent communication refers to any languaging , which fosters understanding of and compassion for any party or parties involve, and is based on the Rosenberg model. It is not only the languaging, but the attitude of the mediator which conveys nonviolent intent. "When we give from the heart, we do so out of a joy that springs forth whenever we willingly enrich another person's life" (Rosenberg, 1999, p. 43).

Positions: Typically non-negotiable issues, which parties bring to mediation, often based upon value or belief systems.

Presence or absence of an apology will be used synonymously with occur/did not occur or occurrence/non-occurrence.

Transformative approach considered herein is in keeping with the Folger and Bush (1994) model which seeks to recognize and empower all parties, rather than a semantic/global reference to all human interaction being transformative in some way or another.

Assumptions

For the purpose of this study the following assumptions were made:

1. It is assumed that participating parties met the criteria for Early Settlement mediation by being present in person at the mediation, and had been appropriately screened by the intake coordinator, in accordance with the Early Settlement Program guidelines.
2. It is assumed that the mediators involved are certified according to the standards set forth by the Oklahoma Supreme Court Alternative Dispute Resolution Act, and were selected to mediate by their respective Early Settlement Regional Director or designated staff person, according to their respective areas of certification.
3. It is assumed that the content of the issue which brought the parties to mediation makes no difference to the purpose of this study.

4. It was further assumed that the researcher offered no advice or opinion pertaining to questions on the Questionnaire.
5. With the Verbal Informed Consent form distributed, it was also assumed that no person participated unwillingly. Each party was given the right to refuse to participate in the study.
6. According to the instructional cover letter and Explanation of Research Study sheet given to each participant, it is assumed that they were aware of the content of the questions and were given information about the procedure.
7. Participants made an honest effort to answer questions on the Questionnaire.
8. Subjects were able to read and understand the questions on the Questionnaire, which was mailed to them.
9. It is assumed that the researcher offered no personal input as to the definition of apology. The perception that an apology did or did not occur remained entirely with the participant.
10. The cases included for survey in this study were randomly selected.

Limitations

The research was limited by the following:

1. The sample was not randomly assigned, as all files of cases referred to the Early Settlement office were available for use in data collection and confidentiality issues prevented assignment.

2. The sample is to be drawn from a population from a Midwestern state and may not be generalizable to other parts of the country. What might be perceived to be an apology in this part of the country may not be applicable elsewhere.
3. The instrument is a self-report, perceptual instrument, and therefore, cannot be entirely free from bias.
4. Operational definitions might need to be redefined and clarified to be generalizable.
5. Confounding variables, such as emotional state of the participant at the time of the Questionnaire administration of the survey, cannot be accounted for.
6. Time period from the time of the mediation to the time of the interview could be confounding in terms of participants' memories and internal processing times.
7. Phone interviews were conducted, which could have biased the information in terms of participants' ability to fully comprehend the questions without the inherent non-verbal cues which come with face-to-face interview.
8. The researcher was not allowed to collect data on any mediation wherein she served as the mediator or co-mediator.

CHAPTER II

Review of Related Literature

Introduction

Conflict

An extensive review of the literature revealed that although there was an abundance of information on conflict, conflict resolution and alternative dispute resolution, of which mediation is a form, limited empirical research exists on the effects of apology on mediation outcomes. Further, whether theoretical, qualitative or empirical, the literature on the subject of an apology, itself, was also limited. Although there may be other ways in which the literature might be categorized, most of the literature review revealed that the available information and research on apology and specifically, the effects of apology on mediation outcomes, emerged primarily out of four broad categories: 1) linguistics, speech-act theory and language philosophy (Abadi, 1990; Ambady, Koo, Lee & Rosenthal, 1996; Austin, 1961, 1962; Bach, 1994, 2003; Bach & Harnish, 1979; Bowling & Hoffman, 2000; Edmondson, 1981; Jaworski, 1994; Kasper, 1990; Searle & Vanderveken, 1985), 2) legal, specifically, areas pertaining to justice, particularly restorative justice and therapeutic jurisprudence (Alter, 1999; Bradford,

2002; Cavanaugh, 1998; Cohen, 1999, 2002b; Deutsch, 1985; Engle-Merry & Milner, 1993; Folger, 1977; Kurki, 2000; LaFortune, 2003; Levi, 1997; Menkel-Meadow, 1991, 1995a, 1995b, 2000, 2001; Zehr, 1995, 1997), 3) social psychology (Burton, 1979, 1990b, 1997; Deutsch, 1949a, 1949b, 1983, 1988, 2002; Engel-Merry, 1987; Goffman, 1956, 1967, 1971; Lewin, 1931a, 1931b, 1951a; Maslow, 1943, 1954, 1971; Schlenker & Darby, 1981), and 4) conflict resolution and negotiation research (Burgess, H. & Burgess, G., 1997; Burgess & Spangler, 1998; Burton, 1990a; Burton & Dukes, 1990; Bush, 1984, 1996a, 1996b, Bush & Folger, 1994; Della Noce, 1999, 2002; Deutsch, 1973, 1988, 1990; Deutsch & Coleman (Eds) 2000; Folger & Bush, 1996, 2001; Folger & Jones, (1994); Goldberg, Green, & Sander, 1991; Lamb, 1998a, 1998b; Lazare, 1995a, 1995b, 2000, 2002; Lederach, 1989, 1995, 1997, 1999; Lewin, 1948; Mayer, 1987, 2000; Schneider, 1995, 2000a, 2000b). Although conflict resolution and negotiation (category four) might be considered a subset of category three, social psychology, sufficient literature exists to merit it being separately categorized and will be discussed as such in this research. Justification for conflict resolution/negotiation meriting its own category is the assumption that not all conflict resolutionists have either backgrounds or interests in the field of social psychology, nor do all researchers have equal interest in practicing conflict intervention and negotiation in the field. In fact, the ongoing dispute between practitioners and researchers concerning the value and relevance of theory over practice and vice versa, can be explained in the contexts of social psychology and conflict interventions respectively, (Moore & Murnighan, 1999). Although it is both a relevant and worthy issue for discussion, the purpose of this study is not to place higher value on one or the other or to discuss the subject at length, as such is beyond the scope and focus

of this study. It is essential, however, in providing a proper foundation for the discussion of the effects of apology on mediation outcomes, to first address conflict's nature and components. In addition, reviewing relevant theories which are congruent with the four areas into which the literature on apology, mediation, and the role and effects of apology within the mediation process fell will be important. The ensuing discussion will further emphasize the importance of this study to the fields of conflict resolution and peace psychology.

Allport (1960) noted that there are many different approaches to conflict resolution, but that few empirical studies have been done to measure their effectiveness. Cross (1999) related an experiment designed to evaluate three such conflict resolution models, specifically, integrative bargaining, interactive problem-solving and distributive bargaining. An overview of other models of conflict resolution will be presented later in this chapter, but the literature review reveals little empirical research on them (Cross, 1999). In fact, in a comprehensive mediation and negotiation literature review, Lewicki, Weiss and Lewin (1992) actually state that "there has been a failure of researchers to test models empirically" (p. 243). According to them, even models considered to be the most popular "have received little or no direct research validation... [and that these models] have risen to their places in the literature on face validity and inherent appeal" (p. 243).

Sacks, Reichart, and Proffitt, Jr. (1999) assert that although third-party intervention has become a noted and somewhat celebrated alternative to dispute resolution, two barriers to the collection of data about these interventions have become apparent. The first major impediment has been the difficulty in gaining access to dispute resolution processes, due primarily to the concerns which third-party intervenors have

about confidentiality and sensitive interactions into which the introduction of instruments of measurement could cause a significant disruption (Sacks, et. al., 1999). The second reason more research has not taken place, according to them, is that there has been a more vigorous interest and preference for controlled laboratory studies over field-work. They go on to state that “academics need to forge links to practitioners to avoid mono-method bias, and to better translate the findings from specific laboratory experiments to practice” (p. 342). Further, for academic findings to be useful to field, practitioners and researchers could better serve this purpose by specifically addressing the generalizability and relevance of their research results. In order for this to happen, Sacks, et.al. (1999) posit that this “will require a wider view of parties, relationships, and outcomes relevant in negotiation research” (p 342).

Through comprehensive literature review and many discussions with major contributors to both the theory and practice of conflict resolution, specifically, mediation and apology, it became evident that it was entirely possible that no empirical data might currently exist to evaluate the effect of apology on mediation outcomes, thus making this an important study. In order to discuss these topics it is helpful to address an integral reason mediations and apologies exist: conflict.

Etiology of Conflict

According to Webster’s New World Dictionary (1991) conflict can be defined in a number of ways: a) “a fight or struggle, esp. a protracted one; b) “war,” c) “sharp disagreement or opposition, as of interests or ideas; d) clash;” e) “emotional disturbance

resulting from a clash of opposing impulses, or from an inability to reconcile impulses with realistic or moral considerations” (p. 292). In the synonym version Webster goes on to define conflict as “a sharp disagreement or collision as in interests or ideas and emphasizes the process rather than the end;” “contention most frequently [applied] to heated verbal strife , or dispute;” “[a] contest [referring] to a struggle, either friendly or hostile for supremacy in some matter” (p. 292). The operational definition of conflict referred to in Chapter I is a process in which one party perceives that its interests are being opposed or negatively affected by another party. Considering the range of Webster’s definitions, Marsh and Marsh (1998) may have been correct when he posited that conflict is on a continuum, with peace and war at opposite ends: peace, war, genocide. And just as there are numerous definitions of what conflict might be, there exist many alternatives to its resolution, including the Alternative Dispute Resolution (ADR) form of mediation, one of the variables in this study, which will be discussed more fully later in this chapter.

Conflict and Social Systems

Interpersonal and intrapersonal conflict has existed throughout the history of humanity. The Institute of World Affairs (2003) postulates that conflict is present in all social systems, whether inter/intra-personal or international, and can be said to be endemic to healthy, evolving societies. The Institute goes on to describe conflict in general, as referring to situations in which the capacity of a society to settle conflicts through regulating mechanisms, such as courts or clan structures, has failed. Conflict may

be defined, then, “as arising from mutually incompatible goals between two or more parties where an effective coordinating or mediating mechanism does not exist” (Institute of World Affairs, 2003, n.p.). Essentially, conflict exists when there are real or perceived differences existing between two or more parties, or within oneself (intrapersonal), and when that incongruity of perception is influenced by factors such as mistrust, tension, emotionalism and/or communication difficulties (Walker, et. al., 1994).

Raider, Coleman and Gerson (2000) comment that there is extensive theoretical and empirical literature on the nature of conflict. Wall and Callister (1995) note that the conflict literature is so “mountainous” (p. 515) that in single-spaced format the references would exceed forty pages. This study however, will be confined only to that which helps lay a foundation for a better understanding of how the occurrence of an apology during the mediation process might affect the mediation outcome.

Why is there so much literature on the topic of conflict? Because conflict has been with us for a long time and people have been writing about it. Deutsch (1990), among others, has explored conflict on five levels: 1) personal, 2) interpersonal, 3) intergroup, 4) international, and 5) interorganizational. The nature of the population used in this study makes only the personal, interpersonal and intergroup levels pertinent. The conflicts at each of these levels, scholars seem to agree (Wall & Callister, 1995), share a generic format. As with any social process there are causes and core processes which have results or effects. These effects feed back to affect the causes. Such a conflict cycle takes place within a given environment and will be repeated (see Table 1). This general model is applicable to the mediation process, especially in the information-gathering phase. Blalock (1989) contends that knowledge cumulates systematically when conflicts are described and

analyzed within a common framework. This approach is preferable, according to him, because it is more practical than maintaining that every conflict contains so many idiosyncratic elements that it must be studied individually or grouped solely with others of its type.

The term conflict resolution implies that conflict is destructive and needs to be ended. It is often thought to be "unnatural, undesirable, and in need of elimination" (Edwards, 1999, p.286). Mayer (2000) explains that in order to try and end a conflict we must first understand it. And according to him, that might be difficult because there is a certain amount of cognitive dissonance, which we all have concerning conflict. It might be said, then, that we are all conflicted about conflict. For example, although we may say and possibly believe, that conflict is a natural, normal and inevitable occurrence, we are reticent to admit that we might be actually having one (Mayer, 2000). We are reticent to admit this, as to do so would be to acknowledge a kind of failure of sorts (Mayer, 2000). Therefore, how we view or perceive the nature of conflict will, to a large extent, determine how we go about resolving it. It follows then, that because perceptions are by definition, person-specific, then conflict can be viewed in as many ways as there are perceptions to accommodate it. Further, there is a reciprocal relationship between occurrences, which affect the way we see a particular conflict, and the nature of that conflict, which subsequently affects our perception of it. Thus, the conflict is viewed in multiple ways on multiple levels, whether real or perceived, and how it is viewed is largely based on the interaction of the parties involved (Mayer, 2000). For example, viewing conflict in terms of a feeling, a disagreement, incompatible value systems or world-views or even a set of behaviors affects our perception of that conflict. These levels, or interactions, may occur

along three dimensions: 1) cognition (perception), 2) emotions (feelings) or 3) behaviors (actions), or a combination of these (Mayer, 2000). On the cognitive level Mayer states that “conflict is a belief or understanding that one’s own needs, interests, wants or values are incompatible with someone else’s” (p. 5). As a feeling or emotion, Mayer asserts that “...it does not take two to tango. Often a conflict exists because one person feels in conflict with another, even though those feelings are not reciprocated by or even known to the other person” (p. 5). In essence, parties are in conflict because one or both, feel that they are. Interpersonal conflict exists when what one party feels translates into an action which is aimed at getting needs met, and which somehow interferes with the other person’s ability to get their needs met (Mayer, 2000).

Concerning Mayer’s view of conflict in terms of behavior, it is important to note that any one of the dimensions mentioned (cognition, feeling, behavior) can affect the other, and is, therefore, not static. Further, a change in the level of conflict in one dimension does not necessarily involve the existence of an inverse relationship between any of the components which might comprise a given conflict. However, often that inverse relationship does exist (Mayer, 2000). As an example, anger may decrease as a result of gaining more facts and information, which in turn, contributes to better understanding of both the party and the issue in dispute. Therefore, as anger decreases, cognition may increase. The emotional and perceptual fields of the conflict are altered when parties gain a better understanding of the facts and motivations involved in it. Lewin’s Field Theory is applicable here. Lewin said that human behavior at any given time is determined by the total number of psychological facts being experienced at that time. All of those facts make up the person's life space (Hergenhahn & Olsen, 1997). Some will exert a positive

influence on the person's behavior and some a negative influence. A change in any psychological fact rearranges the entire life space, thus making the behavioral change dynamic. A change in any one of the psychological facts may affect all of the others. By definition, the information gathering phase of mediation is designed to collect or add information to what has already been presented. Field Theory is applicable here because new psychological facts are continually being added during the mediation process. According to Lewin, this dynamic would affect or change all of the other aspects of the person's perception (Lewin, 1951a). Lewin's Conflict Theory, as described by Heckhausen (1991) states that 'a conflict is to be characterized psychologically as a situation in which oppositely directed, simultaneously acting forces of approximately equal strength work upon the individual' (p.86). Heckhausen further asserts that "[under] certain conditions, the cognitive aspects of an individual's present state can arouse a motivation or influence an existing one" (p.33). By its nature, conflict stimulates the cognition and motivation of parties involved in mediation and they bring to mediation the results of that cognitive and motivational stimulation. It follows then, that both the processes and the outcomes of mediation are influenced by these factors, as might apology.

The emotional or perceptual fields might be altered when parties gain more information or get a better understanding either of each other or the other party's perception of the issue(s), raises two pertinent questions concerning the nature of conflict: 1) Is it possible to be in conflict with someone who is not in conflict with you? And, 2) If only one person believes there is a conflict, is there a conflict? According to Mayer, the answer is yes, in both cases. In fact, he defines conflict as existing "if at least one person believes it to exist" (p. 5). Similarly, for the purpose of this study, *the*

perception that an apology occurred is considered the operational definition of apology, without regard to what criteria for apology, based on existing literature on the subject, were met. Given that the perception that an apology did or did not occur during the mediation process is the criterion used in this study, it is important to note that because each person is unique, it follows then, that each person may enter any given conflict or dispute with certain assumptions about the nature of that dispute, based upon one's view of the nature of the conflict, combined with unique life experiences. These assumptions can act as limitations to understanding what may lie behind a conflict and what alternatives there are in solving it, no matter whether the conflict is rooted in cognition, emotion or behavior (Mayer, 2000). It stands to reason, then, that some kind of tools or aids are needed to assist us in dissecting the complex interactions making up any given conflict. Apology might well be one of those tools, both for understanding the conflict itself and for resolving it.

As a potential contribution to the existing body of literature on conflict resolution, the focus of this study is on the alternative dispute resolution (ADR) method of mediation, and the effects an apology might have on its outcomes. In order to address the subject of this research adequately, it is essential to lay the following foundation concerning conflict and some of the components which contribute to both conflict itself and to its resolution. Because of the multitude of components which might be considered distinctly linked to conflict and dispute resolution, only those which are relevant to this study and the hypotheses addressed, herein, will be discussed. These components will lay a foundation for a better understanding of apology and dispute resolution through mediation. They will also contribute to a better understanding of how an apology might

affect the dynamics of the mediation process in terms of interpersonal relationships, satisfaction with the mediation process, sense of justice and likelihood of further litigation, as well as mediation outcomes themselves. Further, although not specifically measured by this study, these components also relate to the criteria for an *effective* apology, which in turn, might be shown to relate differentially to certain affective outcomes of the mediation process.

Components of Conflict

When assessing conflict it is important to take into account the individual components which comprise it. Although conflicts are rarely identical, there are usually mutually overlapping components in any conflict (Institute of World Affairs, 2003). Assessing a particular conflict situation requires that many of the components comprising it be addressed. Some of these include the following: 1) *Parties*, which are groups, individuals or even social entities, who have an interest in or who could possibly be affected by the conflict. This component can be broken down into a) *primary parties*, who are these who have a direct interest in a conflict and are committed to promoting their goals or agendas, b) *secondary parties*, who, although they might and often do have a stake in the outcome of the conflict, typically do not take an active role in terms of the decision-making process, but may often facilitate, inhibit, enforce or even ruin an agreement, and c) *third parties*, who are generally those who intervene and help parties find a resolution to the conflict or assist in improving the relationship between the parties. Other extremely valuable components to consider when assessing a conflict are the issues

and goals involved in the conflict. *Issues* are what concern the parties to the conflict and might include elements of structural and/or relational factors, such as resources, identity or power. *Goals* are what the parties might want in a conflict and can be described as “consciously desired future outcomes, conditions or end states” (Institute of World Affairs, 2003). Misconceptions about the goals parties to a conflict seek, can readily lead to misconceptions or misunderstandings about the nature of the issues involved, as well (Institute of World Affairs, 2003). Goals are typically presented by parties as either negative or positive. *Positive goals* focus on concrete, future outcomes, whereas negative goals reflect a party’s reluctance to experience a painful or unwanted outcome (Institute of World Affairs, 2003). *Negative goals* bear a resemblance to Freud’s Psychoanalytic Theory of the pleasure principle, wherein human beings may seek pleasure for the sake of pleasure, or may, seek it in order to avoid pain (Hall, 1982). The integration of both the positive and negative goals is desirable because it enables the mediator to work more easily and effectively with what parties really want rather than what they do not want, especially if the negative goal unbalances the agreement in favor of one party or the other. This unbalancing is an outcome antithetical to the goals of the mediation process, itself (Walker, et. al.,1994), in which the inherent goal of the mediator is to ensure equality or power balance between parties.

Structural and Relational Factors

Conflict is a product of both structural and relational factors (Institute of World Affairs, 2003). According to the Institute, structural factors refer to those such as

political, social, economic and institutional dynamics, whereas relationship factors reflect antithetical goals, values interests and motivations. These factors can be further broken down into four categories: 1) distribution of resources, such as money, property or other material things, 2) power, which includes the assignation or allocation of control or the participation in decision-making, 3) identity, which relates to the cultural, linguistic, social or ethnic characteristics of a people, and 4) values or core beliefs, especially in regard to political views, religion or other ideology. Most conflicts emerge out of a combination of these factors. Similarly, it follows that apologies often occur or do not occur depending upon any one or all of the structural and relational factors which concern conflict in general.

Although conflict might imply something intractable, negative, confusing and potentially unbeneficial, it is important to realize the benefits that conflict and its resolution afford. Conflict and the process of resolving it can raise levels of consciousness, according to Bush and Folger (1994), and give individuals an opportunity to rise to their potential. Resolving a conflict constructively can provide results in terms of improved inter and intra-personal relationships, and ability to relate in a positive, productive way with one another. So, in essence, conflict can either be constructive or destructive, depending upon how it is viewed. Deutsch and Coleman (2000) noted that since most conflicts involve mixed-motives, containing elements of both competition and cooperation, understanding those two elements is important. His theory will be discussed more completely in the social-psychological section of this review.

Responses to Conflict

There are many responses one might use to resolve any given conflict, and these are usually quite similar to those occurring in the mediation process. They range from affective responses, which include the emotional, attitudinal and behavioral responses such as yelling, posturing or slamming a hand on the table. Non-verbal cues, such as facial expressions and other types of body language occur. Of course, gender, power balance, value systems, religious beliefs, moral development, communication style and ability, as well as one's perception of justice and fairness bear heavily on how any given response will manifest in the conflict or mediation process.

One response to conflict, was frequently discussed in literature, is the concept of forgiveness and the role it plays in inner healing. Govier (1994) explores the notion of forgiveness and asserts that for forgiveness to happen there should be several elements present, which include a mutual "understanding that the offender has done something wrong" (p .10), an element distinctly related to two of the criteria for apology, acknowledgement and recognition of what the wrong was which was done. Lederach (1995) concurs, and his views will be discussed more in detail in the conflict resolution category of this review.. Acknowledgement, or the understanding to which Govier (1994) refers, is a criterion for apology (Schneider, 1995, 2000a, 2000b; Lazare 1995a, 2000).

Variables Impacting Conflict Outcomes

Whether during a mediation or through a conflict in general, the possible variables affecting both the response to conflict and to its outcomes are similar, if not the same in most instances. Consequently, whether or not an apology occurs could be affected by these variables. Some of these variables tend to weigh more heavily in terms of affecting conflict and mediation outcomes, than do others. They include the relationship of the parties to one another, the type of issue, the number of issues to be discussed within the mediation and which pertain directly to the conflict itself, the time constraints which present themselves as limitations when dealing with the number and type of issues at hand, ability of the parties to communicate their thoughts, feelings and concerns to the mediator and to one another, gender, and the balance of power, real or perceived. Examples of power struggle or balance of power can occur in the form of position, such as those of superior to subordinate; or ethnicity, wherein one race is perceived to be dominant over the other; sexual orientation bias; or socio-economic status. Of course, the degree of commitment that parties bring to the process can greatly affect the outcome and resolution of the conflict, as can the mediator's biases and level of commitment.

The preceding section reviewed several aspects of conflict: its etiology, components, benefits, responses to it and structural and relational factors which can add or detract from the successful resolution of it. It is now important to focus on the categories of the relevant literature for this study: 1) linguistics, speech-act theory and

language philosophy, 2) the legal field, specifically, restorative justice and therapeutic jurisprudence, 3) social psychology, and 4) conflict resolution and negotiation research.

Category I: Linguistics, Speech-Act Theory and Language Philosophy

Within the existing body of literature pertaining to apology the areas of linguistics, speech-act theory and language philosophy are important to discuss. The discussion of apology by various scholars (Edmonson, 1981; Goffman, 1971; Olshtain & Cohen, 1983; Blum-Kulka & Olshtain, 1984; Searle & Vanderveken, 1985; Tavuchis, 1991) focuses on apology as a speech act.

It is important to address apology in terms of linguistics, speech-act theory and the philosophy of language to establish that this study is distinctly *not* about what an effective apology is, what forms an apology takes, the types of apologies which may exist, or even the purpose of apologies. These points will be briefly addressed later, but are not part of the study itself. Each of these areas, though worthy of discussion, are touchstones for future research, but not germane to this study. This is a study of *effects*, if any, an apology might have on mediation outcomes.

The Speech-Act Model

Although making a statement about something may be considered the paradigmatic use of our language, many goals may be accomplished with words. People do more things with words than simply convey information. Although speech act theory

has focused primarily on utterances, particularly those said in conversation and other face-to-face instances, the phrase “speech act” is a generic term for any sort of language use, oral or otherwise. As speech act is not simply the act of producing sounds (Bach, 2003). According to Bach, almost any speech act is essentially the performance of several acts at once, and only able to be distinguished by the speaker’s intention. For instance, in a given speech act, several factors come into play, such as the very act of saying something, what the purpose of the act is (i.e. promising, requesting, apologizing), and what the intended goal of the act is in terms of how it is meant to affect those for whom it is intended. Similarly, Austin (1962) reminds us that we perform many kinds of speech acts besides making statements. He is careful to distinguish between the meaning and reference of the words used by a speaker, and the other speech-acts made by those speakers (Bach, 2003).

The theory of speech-acts is partly classification-oriented and partly explanatory (Bach, 2003). Speech acts need to be classified so by addressing how they may have succeeded or failed, according to Bach (2003). Speech acts are often ambiguous and indirect, thus contributing to the success or failure of a given speech act. According to Bach (2003) a major task for speech acts is to more fully explain, on behalf of the speaker, how the speaker can accomplish what they are trying to accomplish through the speech act, and to do it in spite of the various ways linguistic meaning underdetermines use.

In general, speech-acts are acts of communication, which are meant to express an idea, an attitude or possibly an action. Typically, the type of speech-act being performed reflects the type of attitude being expressed. Bach (2003) uses the example that a

statement expresses a belief, a request expresses a desire and an apology expresses a regret. As an act of communication, it can be assumed that any given speech-act has succeeded if the audience identifies with the speaker's intent and attitude. Austin (1961, 1962) on the other hand, takes little account of the speakers' intentions or the hearers' inferences and perceptions. He assumes that the successful performance of what we do in saying something, or what he calls an illocutionary act, is a matter of convention, not intention.

In language philosophy and linguistics the assumption is that to say something is to state something and that that statement must be either true or false (Thomas, 2003). Austin (1962) challenges that assumption by asserting that the performative utterances (speech acts) are neither true nor false. Simply put, there are constative utterances, which report or *state* something and performative utterances which *do* something. He considers an apology to be a performative utterance, therefore, a speech-act.

Initially, Austin (1962) distinguished between what he called constative and performative utterances, maintaining that only constatives could be either true or false. He later asserted that constatives worked like performatives. Just as a suggestion or an apology can be made by saying "I suggest" or "I apologize," then an assertion or a prediction can be made by saying, "I assert" or "I predict." This distinction, says Bach (2003) applies to any statement or other speech-act and maintains that one does not have to use the verb form to actually perform the action the verb indicates. (i.e. Saying, "I suggest" is equivalent to suggesting.) Therefore, according to Bach and Austin, to say "I apologize" is the same as apologizing. This researcher and Lazare, 1995a, 1995b, 2000,

2002; Schneider, 1995, 2000a; Tavuchis, 1991; Lamb, 1998b) contend that saying “I apologize” is distinctly *not* the same as saying I’m sorry.”

Austin (1962) divided the classes of performative utterances into three distinct levels of action beyond that of utterances: locutionary, illocutionary and perlocutionary acts, which simply put, refer to the act *of* saying something, what one does *in* saying something and what one does *by* saying something, respectively (Austin 1962).

According to him, a locutionary act is “roughly equivalent to ‘meaning’ in the traditional sense” (p. 108). It is the act *of* actually saying something-- saying words and making sentences. Austin defines illocutionary acts as utterances having a certain conventional effect, such as what we do *in* saying something. These could include such acts as warning, requesting, questioning or apologizing. Whereas a locutionary act has a certain sense and reference (meaning), an illocutionary act has a certain force, that is, the way it is to be understood or “way it is to be taken” (p. 99). For example, if one were to say, “Close that window” the meaning remains the same as the statement, but the interpretation is unclear about the force or nature of that speech-act, that is, whether it was a request or an order. Finally, a perlocutionary act is what we do when we perform an illocutionary act. The emphasis in this speech act is the *effect* and “what we bring about or achieve by saying something, such as convincing, persuading deterring, and even, say, surprising or misleading” (p. 108). Thomas (2003) asserts that in terms of apologizing, the locutionary act of saying the actual words, “I’m sorry” may have the illocutionary force of an apology but might also have the force of a confession, or a provocation, or even a kind of oblique accusation. This very assertion makes it necessary to discuss apologies in terms of the legal arena, as an apology often infers guilt, which

keeps many in the legal profession from encouraging clients to communicate with one another for fear of admitting responsibility--a key element in effective apologies. Thomas ((2003) goes on to say that it is important to distinguish between realizing that the words had the force of an apology and may or may not have been accepted, but might in Austin's words, "have the effect of further irritating the offended party" (Austin, 1962, p. 29). As Austin noted: "Saying something will often, or even normally, produce certain consequential effects upon the feelings, thoughts, or actions of the audience, or the speaker, or of other persons: and it may be done with the design, intention, or purpose of producing them..." (p. 101).

Illocutionary acts were of primary interest to Austin (1962), for it is this type of act which is "what we are supposed to be performing when we produce a performative" (Black, 1969, p. 409). This fact is especially important to this study, since it is within this category that Austin (1962) placed the apology. It could be said that when an apology is given or offered we *do* something *in* saying something, rather than simply performing the act *of* saying something, or producing a specific effect *by* saying something. It could be said that to say, "I apologize" is but to state the verb, not the feeling behind it nor the responsibility to be taken for any offense, which inspired the apology to begin with.

It is not necessary, for the purposes of this review, to enter into a more extensive discussion of speech-acts, linguistics or semantics and language philosophy, but only to emphasize what might be pertinent. For that purpose, it should be noted that Austin (1962) also distinguished his performatives into implicit and explicit ones. He maintained that utterances in the implicit performative are those which do not contain verbs which can identify the act being performed. They are essentially, indefinite and ambiguous in

comparison to the explicit forms. He insisted that explicit performatives are the only utterances to be thought of as legitimate and necessary, and that they had to contain the verb expressing the action. According to Austin, then, the only legitimate type of apology is the one which contains the explicit performative verb, “apologize,” and that it has to be issued in the first person present singular indicative active. “I apologize,” then, is the only legitimate apology, according to him. Interestingly, he also noted in his analysis of apologies that they were reactions to the behaviors and attitudes of other people, but said little about the significance and importance of monitoring and taking responsibility for our own behaviors and attitudes. This is one of the criteria for apology, addressed in this study, and which literature supports as necessary to the efficacious apology (Lazare, 1995a). Austin (1962) asserts that apologies should be evaluated in terms of their success rather than the meaning or the verity in them, a point well taken and which is an area for further research.

Austin (1962) also maintained that six criteria had to be met in order for the apology to be considered successful, a construct which Lazare (1995a, 1995b, 2002; Schneider, 2000a, 2000b) subscribe to with some variance in the criteria. Austin (1962) makes the assertion that the following criteria need to be met for the efficacious apology to occur : 1) A conventional procedure for apologizing must exist, 2) the person offering the apology, the person to whom the apology is directed and the context in which it is offered must warrant an apology being offered, 3) the participants in the apologizing act must perform it correctly, 4) the participants in the act of apologizing must perform it completely, 5) the person offering the apology must have the appropriate thoughts and feelings to be associated with the apology, and 6) the parties to the apology must follow

up the apology with the appropriate behavior. Austin's criteria for successful apology can be related to those asserted in this study, with some exception. For the purposes of this study, no conventional procedure existed, only the participants' perceptions that an apology occurred. "Correctly" (Austin criterion #3) can be used in this study to mean that some effort was made by one or both parties in a given mediation, toward the remedial work, which most researchers of apology assert is characteristic of an apology and thus necessary to do (Schneider, 1995; Lazare, 1995a, 1995b, 2000). In this study, having appropriate feelings and thoughts (Austin criterion #5) is related to having sincerity or regret. Finally, following up with the appropriate behavior (Austin criterion #6) is related to the criterion within this study in terms of willingness to make amends and/or restitution.

So, in many ways, although Austin did not appear to take into account the crucial role of the speakers' intentions and the hearers' inferences, he did recognize that certain components within a given situation, together with the characteristics of human nature, combined to necessitate a creation of a taxonomy of criteria for successful apology, speech-act or not. It is at this juncture where a discussion of literature in the social psychology arena can add depth and dimension to the concepts of conflict resolution and apology.

Category II: Social Psychology

Social Psychology: A Brief Overview

The contributions of Darwin, Marx and Freud dominated the intellectual climate during social psychology's beginnings, and significantly influenced the writings of early social psychologists interested in studying conflict resolution (Deutsch, 2002). Darwin stressed the "competitive struggle," (quoted in Deutsch, 2002), while Marx emphasized class struggle between the bourgeoisie and the proletariat in *The Communist Manifesto*. Freud's psychosexual development theory showed conflict to exist in the struggle between the biologically rooted infantile id and the socially acceptable, internalized surrogate parent superego. In a social psychological view, which describes the very nature of conflict and the hopefully attendant resolution, Schachtel (1959) wrote:

The concepts and language used by Freud to describe the great metamorphosis from life in the womb to life in the world abound with images of war, coercion, reluctant compromise, unwelcome necessity, imposed sacrifices, uneasy truce under pressure, enforced detours and roundabout ways to return to the original peaceful state of absence of consciousness and stimulation.... (p. 10).

This illustrates the view of social psychology during the early period as one viewing conflict as primarily, a competitive struggle (Deutsch, 2002). The intense competition between businesses and nations at this time, the rise of Nazism, World War II and the Great Depression reinforced this perspective. According to Deutsch, evolutionary thinking such as "survival of the fittest," "hereditary determinism," and "stages of

evolution,” was so strong that the rich and powerful in society were inferred to be biologically superior, and had achieved wealth and position as a result of natural selection. Therefore, it would have been against nature to interfere with the inequality of and suffering of the poor and weak, a notion assuredly antithetical to social justice.

According to Deutsch (2002) the decline of the above instinctual theories led to the emergence of two primary modes of explaining war and intergroup conflicts: 1) the psychological perspective and 2) the socio-political-economic view. The psychological mode attempts to explain how people think or what goes on in their minds in terms of the perceptions, beliefs, motivations, values and any other psychological views resulting from a person’s various experiences. In contrast, the socio-political-economic view attempts to explain social, economic and political factors in terms of levels of armaments in these areas, and other objective conflicts within them.

The Social Psychological Study of Conflict: An Historical View

Deutsch (2002) notes that most of the research on war, intergroup and industrial conflict in the 1930’s, 1940’s, and 1950’s was largely nonempirical, and limited to the two categories discussed above. With the decline of Darwinism and the instinctivist views, empirical methods began to emerge. It is not necessary to detail these, only to note as an historical account, that these empirical studies had serious “deficiencies in their research designs” (Deutsch & Coleman, 2000, p.309), and that there was “little conceptual clarity about some of the basic concepts [such as] competition, cooperation [and] self-orientation” (p.309). He goes on to note that these empirically flawed studies

resulted in inadequate operational definitions, narrowed scope and lack of consistency between and within studies. Some theories did emerge as critical to the study of conflict, within the social psychological context. A brief discussion of them is in order.

Field Theory

Kurt Lewin's field theory affected much of the later work in many areas of social psychology, and is applicable to the mediation process. The theory, which includes concepts of tension systems, such as driving and restraining forces, one's own forces and those which are induced, levels of aspiration, power fields, interdependence and overlapping situations greatly contributed to conflict study and created a new vocabulary, of sorts, for discussing and thinking about conflict (Deutsch, 2002). Using his analyses of force fields he presented a theory of three basic types of psychological conflict: 1) approach-approach, wherein an individual stands between two potentially positive valences, or desires, of equal strength, 2) approach-avoidance, wherein the individual is torn between two opposing desires (valences) and 3) avoidance-avoidance, wherein an individual must choose between the desire (positive valence) and the possible negative outcome (negative valence). Further, Lewin said that human behavior, at any given time, is determined by the total number of psychological facts being experienced at that time. Some of those facts will exert a positive influence on the person's behavior and some a negative influence. A change in any psychological fact rearranges the entire life space, thus making the causes of behavioral changes dynamic. A change in any one of them affects all of the others (Hergenhahn & Olsen, 1997).

Extensive research on the cooperation-competition conflict theory is widely referred to in social psychological literature and based upon Lewinian theory, Deutsch makes some predictions, which are referred to below (Deutsch 1949b, 1973, 2002; Deutsch & Coleman, 2000). The theories of Deutsch are congruent with the goals of mediation and are worthy of mention within this chapter. When individual actions in a group remain more effective than ineffective, then cooperative relations, or those human relations wherein the goals of the parties are interdependent in a positive way, compared with the competitive approach where they are not, should exhibit certain characteristics (Deutsch, 2002). These characteristics are 1) effective communication (thoughts and ideas get verbalized between parties who are exhibiting active listening resulting in greater understanding and empathy), 2) friendliness and helpfulness (less obstructionist behaviors will result in greater satisfaction among parties with the process and solutions of the conflict because of increased trust and respect), 3) coordination of efforts (an orderly discussion and a task-oriented goal will be manifested), 4) a feeling of agreement with the ideas of others (a sense of basic relatedness with the other party(s) beliefs, values are a result of cooperative groups) and 5) a willingness to enhance the power of the other party to accomplish the other's goals (means an overall reciprocal strengthening of the parties.) The competitive approach reflects the antithesis, of the cooperative approach, and is not the focus here. What is of importance to focus upon is how these concepts of cooperation relate to and are congruent with the goals of mediation and even the role of apology in mediation. A willingness to exchange power is the underlying construct of the apology given, and all of Deutsch's predictions above can be compared to the ingredients of a successful mediation. Johnson and Johnson (1989) have done studies which indicate

that a cooperative rather than competitive process leads to greater productivity, better interpersonal and inter-group relations, better psychological health and higher self-esteem, as well as more constructive conflict resolution. These are some of the goals and reported successes of mediation (Walker, et. al., 1994). When parties are able to process through or even vent feelings about the injustices (real or perceived) which brought them to mediation, they are able to be more confident in themselves as they structure agreements tailored to their specific needs (Walker, et. al.; Davis, 1989). They are more empowered by having an “enhanced self-reliance” (Alder, 1998, p. 16).

Human Needs Theory

Most people likely do not recognize the difference between the terms “conflict” and “dispute.” Some conflict theorists and scholars do, however. One of these scholars is John Burton, who pioneered a theory of conflict resolution that continues to dominate scholarly literature on that subject today (Sandole, & van der Merwe, 1993). He applied Human Needs Theory to conflict resolution (1990b, 1997, 2003). His theory is comprised of two distinctive elements and include 1) the distinction between a conflict and a dispute and 2) his theory of Basic Human Needs (BHNs) (Burton, 1979).

In the field of conflict resolution, not unlike other fields, confusion due to differing definitions of relevant terminology exists. One useful way, according to Burgess and Spangler (1998) is Burton’s distinction and clarification of them. Disputes are short-term disagreements, which are somewhat easily solved, whereas conflicts are long-term, deeply-rooted problems resulting from seemingly non-negotiable issues (Burton, 1987,

1990a, Fisher, 1990). Disputes involve interests, which are negotiable, and able to be resolved by meeting the needs and interests of both sides. The long-term conflicts, to which he refers, usually involve non-negotiable issues rooted in moral or value differences and more high-stakes, distributional questions, or even issues about who dominates whom. He asserts that fundamental human psychological needs for identity, security and recognition are often issues in the Burton definition of conflicts, which is why these issues often develop into intractable and often escalating conflicts, essentially because people will not compromise fundamental morals and values. If the situation is categorized as a “dispute,” then according to Burton, morals and values are not at issue and therefore the dispute is more easily resolved. He further theorizes that there are conceptual differences between dispute settlements and conflict resolution. Settlement involves negotiated or arbitrated, third-party solutions and resolutions (Sandole, 2003), whereas mediation often leaves the solutions up to the parties, with the assistance of a neutral third-party.

“Conflicts” and “disputes” have been traditionally interchangeable terms in conflict resolution discourse and the confusion has led to the differentiation of international disputes and conflicts and domestic disputes and conflicts. Domestic situations have been considered less serious than those of an international nature, so Burton’s conflict model has been more often applied to them. It has been assumed that domestic issues do not generally produce “conflicts,” which cannot be addressed through higher authorities of the state and government. But Sandole and van der Merwe (1993) note that recent ethnic wars prove that there is a spilling over of internal conflicts, which result in global ones. Therefore, according to them, “we are forced to the conclusion that

conflict is a generic phenomenon that knows no system boundaries” (Sandole & van der Merwe, 1993, p. 56).

is concerned with the satisfaction of the basic human needs, which all of the parties have. What is important to note here is that the conceptual understanding of disputes and conflicts which Burton posits, provides two frameworks for conflict analysis: 1) conflict situations with negotiable issues, which require judicial remedy, arbitration or possible third-party intervention, or 2) conflict situations wherein compromise is impossible and requires analytical problem-solving (Sandole & van der Merwe, 1993). Distinguishing the terminology is important only in the strictest sense when engaging in conflict analysis. This study is not concerned with the analysis of conflict, but assumes that conflict and dispute are essentially, the same, and does not apply Burton’s distinction between them. The reason is that mediation, as it is addressed within this study, involves some issues, which are negotiable and can be settled within that process, and those wherein the third-party is the judge, provided no agreement can be reached in mediation. Often, that agreement involves a measure of analytical problem solving. What *is* important to look at is Burton’s Basic Human Needs Theory, in that responses on the Questionnaire survey indicate support for it, particularly those related to personal empowerment, self-esteem and sense of justice and fairness due to acknowledgment and sincerity of an extended apology.

Human Needs Theory is the most significant contribution of the past ten years to the emerging study of basic human needs, in that it makes the case for the idea that deep-rooted conflict comes from unsatisfied basic needs. Burton (2003) examines the question of whether conflicts due to inherent human aggressiveness, resulting from the

consequences of evolution and survival of the fittest, or are they due to a person's problem with adjusting to inappropriate social institutions and norms. If they are due to aggressiveness, then conflicts just have to be lived with, being controlled largely by deterrent forces, such as the police. Conflict resolution, or getting to the source of the problem, in this instance, would be a moot point: the source is known but there is nothing to be done about it. Burton reasons however, that implied in conflict resolution is the supposition that aggressions and conflicts are a direct result of institutions and social norms being incompatible with basic human needs (Burton, 1979, 1993, 2003). He argues that aggressions and anti-social behaviors are stimulated by social situations and that there is a limit on how much an individual can or should be expected to conform.

Therefore, the human needs, which are being frustrated must be satisfied in order to solve the conflict – and they will be, he argues, one way or the other. He includes in his list of basic human needs those which go beyond Maslow's hierarchy, which includes food and shelter, to include personal recognition, security and identity, which are fundamental to an individual achieving development and security in his or her society (Sandole, 2003). These BHNs for identity, security and recognition can influence beliefs and the values associated with them, and can have a tremendous emotional impact on the frustration or relief of those highly valued beliefs (Burton, 1997). If they are not met, and society persists in ignoring these needs, then war, gangs and domestic violence are the result (Burton, 1990b, 1997). What is of extreme import in Burton's theory is this: If conflict resolution is to be taken seriously, then Burton's theory calls to task methods of resolving conflicts with more than introducing altered perceptions and a feeling of good will into a situation, and necessitates embracing a more comprehensive view, which assumes that

societies need to adjust to the needs of people--not the other way around. Simply put, concerning the link between basic human needs, no matter how subjectively they are experienced, the better the fit between the needs and the means for fulfilling them, the less likely are violent attempts to fulfill them. The converse is also true. The worse the fit, the more likely an individual is to employ a violent means to fulfill them. For this reason, Burton's theory is relevant to ADR and mediation, since both are societal institutions designed to resolve conflict. Depending upon the theoretical orientation of the mediation, for instance, problem-solving or transformative, recognition, security and identity may be achieved, all of which meet Burton's definition of a basic human need. Further, an apology, a nonviolent, communicative solution to violence, conducive to most any type of mediation, but seemingly most suited to the transformative approach, could be an instrument used to produce the same recognition and identity, while adding a component of empowerment, as well.

Contemporary Themes in Social Psychological Conflict Research

In the past seventy years significant scientific progress and important contributions to society have been made by ongoing research into conflict and its resolution (Deutsch, 2002). Methodologically, better techniques have been employed both in the field and in the laboratory (Coleman & Lim, 2001; Deutsch & Coleman, 2000; Ross & Rothman, 1999). A better understanding of the nature and determinants of both the constructive and destructive elements of conflict, as well as the consequences and determinants of some of some of the processes of distributive justice (which will be

discussed in category IV of this review) and the beginnings of a more comprehensive view of intractable conflicts has come about. Further, the function of third parties, such as mediators, as well as the effectiveness of the mediation process has become more prevalent, the benefits of which are highlighted in much qualitative research. All of this represents a more integrated and systematic knowledge base of the social psychological aspects of conflict, conflict resolution and justice. Even ethnic and intractable conflicts have been addressed with social identity theory. Northrup (1989) defines identity as a psychological sense of self, as well as self as it relates to the world. A significant part of an individual's personal identity consists of his or her social identity, and is influenced by the group in terms of "enemy image" (Stein, 1996, p. 98.) These enemy images are often the product of already deeply rooted social and psychological needs. The definition of self may take place on multiple levels, which include interpersonal, community, organizational, cultural or international. If conflict involves a threat to identity, may become intractable (Northrup, 1989). In her description of the dynamics of conflict, Northrup,(1989) describes five components: 1) conflicts develop over time, 2) they are multidimensional in that they contain intrapersonal, social and relational aspects, 3) they evolve around multiple issues, 4) they contain both realistic and non-realistic issues and 5) the distribution of power in a conflict plays an important role in conflict development. Identity operates as a dynamic because it evolves through the relationships a person has with the world and others. Power is an important concept in the apology since it is equivalent to vulnerability or willingness to take the risk to apologize, while not knowing whether the apology will be accepted or not. Schneider (2000a, 2000b) refers to this as a type of vulnerability, that is, being vulnerable enough to take the risk to apologize, not

knowing if the recipient of the apology will accept the apology or not, the result of which is a power shift between the giver and the receiver of the apology (Schneider, 2000a, 2000b).

According to Northrup (1989) in order to understand the difference in the settlement of a conflict and the transformation of it, it is important to look at where changes in the conflict occur. In order to do this, she places the conflict on levels. The first level includes changes which are peripheral to core identity, which are those not pertaining to the original issue of conflict. The second level of change influences the dynamics of parties' relationship to each other. The third level of change is where changes in the core identity of a person occur. Peripheral changes can create settlement but will not produce long-term transformation. The likelihood of transformation will dramatically improve when the nature of the parties' relationships, is altered (second level.) Identity changes (third level) encourage changes in relationships and behavior.

Social psychology has contributed to the understanding of conflict resolution by categorizing psychological processes such as autistic hostility, biased perceptions and self-fulfilling prophecies. We now know that these processes can help or hinder the resolution process. And we now know about the psychological correlates of escalating conflict, how to apply techniques for de-escalating it through tension reduction, formerly mentioned in Lewinian theory, and we know that these are essential to resolution. Finally, advances in the study of conflict resolution have been significant from a social-psychological perspective, in that techniques learned through empirical and qualitative research have been employed in the conflict resolution training programs in schools, industry, administration, labor unions, government and many civic and community

organizations. Social psychological research has been vital in helping initiate training programs in negotiation skills, mediation skills and on the nature of conflict itself.

It has been said that knowledge is power. By an awareness of options available for resolution of conflict and a knowledge base from which to draw those options, it would seem that solutions would be more readily available. To increase the knowledge base from a social psychological standpoint Deutsch (2002) posits that it is beneficial to address some of the major questions which have been noted by social psychologists in the past three decades or so. First, what are the conditions which give rise to a constructive or destructive process of conflict resolution? In terms of a negotiation construct the emphasis here necessarily would be on determining the circumstances under which parties to a conflict are enabled to reach a mutually acceptable agreement. This would draw upon the cooperative potential available in conflict itself (Deutsch & Coleman, 2000). Second, what are the circumstances, strategies and tactics which contribute to the success of one party over another in a given conflict? The emphasis here, is on how a conflict or bargain is started, so as to win, or at least do somewhat better than, one's opponent or adversary. This question comes out of competitive elements of a conflict situation (Lewicki, Saunders & Minton, 1999). Third, what determines the nature of the agreement between conflicting parties when and if they are able to reach an agreement? Here, the concern is with cognitive and normative factors which might lead people to perceive a particular solution as possible or promising in terms of being fair, just and stable (Lerner, 1975). This third question is a more recent one and has been addressed under the social psychological heading of equity and justice, to be discussed later in this chapter. Fourth, we might ask how third parties might be used to prevent conflicts from

becoming destructive and how they might mitigate what already has become destructive. This question has been reflective of mediation studies and conflict de-escalation strategies (Kressel & Pruitt, 1985). Fifth, and of paramount importance to this researcher in terms of future research, is the question of how people can be educated to manage their conflicts more constructively. This study reflects a passion to investigate promising avenues of conflict resolution. This has also been of concern to trainers and consultants working with businesses government, as well as those responsible for the education of children in schools. Coleman and Lim, (2001) Deutsch, (2002) and Johnson and Johnson (1989) have attempted to answer this question.

Of import to current and future national and international concerns is the question of how and when to intervene in prolonged, intractable conflict. There is a plethora of protracted, destructive conflicts (the current war on terror waged by the United States and its allies being but one example), which highlight the need and even the social obligation to strive diligently to answer this question. Some scholars, such as Deutsch (1983, 1988), Burgess and Burgess (1997) and Burton, (1987) focus specifically on this issue. Of critical importance to ask, in terms of empirical and qualitative studies, is how applicable in other cultural contexts are the theories which are developed in the United States and Western Europe? Cohen (1991), Henderson (1989), Kimmel (1989), and Lederach (1995) explore options related to this question. These issues and questions are relevant, and this review attempts to show that mediation and apology are worthy goals which are deserving of extensive research..

Deutsch, (2002) asserts that although there has been significant progress in conflict studies and resultant understanding, this progress does not yet begin to match the

social need for improved understanding of conflict resolution it. Human Needs Theory offers us an opportunity to look into a range of peace-building processes, which can assist in the reduction of both direct and structural violence. The theory helps to explain why needs for security and in social interactions are so often pre-existing factors in destructive identity conflicts (Christie, 1997).

Perhaps one of the most powerful types of social interactions is the apology. There is considerable evidence that apologies enhance a victim's impression of the offender (Schlenker & Darby, 1981), and represent admissions of blameworthiness and regret (Goffman, 1971). Apologies also appear to be remedial attempts to repair or minimize the damage done to identities and to minimize possible negative consequences. Apologies involve pro-social components and can serve as important tools for making amends for wrongs done to others (Schlenker & Darby, 1981). The challenge for the burgeoning field of peace psychology and conflict resolution is to explore peaceful means for individuals to get their security and identity needs met non-violently. Perhaps with a non-violent, conciliatory effort such as apology, identity can be affirmed, validation through the inherent power exchange of apology can occur and not only conflict, but people can be transformed as the conflict is resolved.

Category III: Justice and the Legal Arena

Goffman's (1971) famous characterization of apology is applicable to this segment of the literature review. He notes that while accounts, which are attempts to explain away the wrong-doing through excuse-making or justifications, have been

addressed at length in literature, especially in the legal literature, apologies have not, even though they are central to the issue. He characterizes an apology as an act wherein there is a splitting of the self. One part of the self identifies with the offense and feels guilt for it whereas the other part of the self “dissociates itself ... and affirms a belief in the offended rule” (p. 113). Traditionally, the law, not apologies, has sought to rectify wrongs. The word justice is defined in the Merriam Webster Dictionary as “the administration of what is just, as by assigning merited rewards or punishments” (p.389). Another definition casts justice as “the administration of the law” (p. 389) and yet another definition says that it is “fairness,” with “righteousness” listed as a synonym for fair. (p. 389). The importance of the inclusion of justice in this review is that the sense of fairness and justice are items addressed in this study and tended to indicate whether or not an apology was either in order or worth being given. Justice also has implications for the way the larger economic, social and political institutions organize themselves. In addition, apology as discussed within legal documents, of necessity, must include a discussion of justice, since it is a concept our present legal system embodies and attempts to achieve.

Many types of justice exist and tend to be defined in the literature within the context of the particular orientation of those defining it. For example, although religious orientation is not a focus of this study, an example of justice being defined in a religious context is Catholic social teaching, which distinguishes three dimensions of basic justice as commutative, distributive or social (Catholic Social Teaching, 2004). Commutative justice calls for fundamental fairness in any and all exchanges between people or groups, and requires respect for equal human dignity of all persons in all economic transactions,

contracts or promises made. Distributive justice, in the Catholic tradition, requires that the allocation of income, power or resources in society must be evaluated in terms of their effects on those who have unmet needs. If a person is recognized as a member of the community of human beings, then the community is obligated to assist that person in the fulfillment of these basic needs. Finally, social justice in the Catholic social teaching context implies that all able persons have an obligation to be active, productive participants in society and that society has a reciprocal obligation to enable them to do this. Many religions have a similar perspective, though the terminologies might differ.

It is important to note in the further discussion of forms and types of justice, that there seems to be the commutative element in all of them. That is, many forms build upon each other, or have additive elements of their precursors, and sometimes combine in such a way that the end result is not affected by the addition of the other elements, as the ensuing discussion will show. In other words, the elements of the individual types of justice interact in such a way as to overlap with each other. These elements become distinguishable from one another largely by definition and context. For example Chatterjee and D'Aprix (2002) suggest that justice is merely another form of group behavior and that group norms dictate how justice is socially constructed. Norms are simply rules of behavior within a group (Feldman, 1984). He goes on to say that sometimes, these norms may be ambiguous and can be understood in more than one way. It is because of this that it appears that they often contradict each other. He asserts that how a groups sets up procedures for dealing with these ambiguities and contradictions is what is referred to as a justice system.

Chatterjee and D'Aprix (2002) theorize that there are five types of justice: protective, corrective, restorative, distributive and representational, and that these forms appear to be on a continuum which would simulate the normal curve in statistical measurement. For example, corrective and protective justice assist in gaining and maintaining social control and the existing social order, while distributive and representational justice often benefit disadvantaged or under-represented groups. Thus, one of these tails, consisting of corrective and protective justice, helps support the existing social order of groups, thus providing stability. The other tail, consisting of distributive and representational justice, supports the vulnerable and peripheral members of society's groups and is often the catalyst for social change. As the views of Lederach (1995, 1997) will show in Category IV of this review, social change and personal transformation, among other things, are reciprocally related. When personal transformation begins to occur, the atmosphere is ripe for reconciliation, the catalyst for which might be an apology. Restorative justice, in the middle of the two-tailed theory, serves both the functions of helping those on the fringe of society, as well as maintaining social order (Chatterjee & D'Aprix, 2002.) According to them, all of these five group norms evolve over time and shape all other types of justice and are an intrinsic foundation of group behavior. Further, according to them, the norm of social control is usually connected to boundary maintenance, to which all groups adhere. The group determines who is eligible for membership in the group and who is not, and metes out the punishments given for any violation of these existing boundaries. Studies by Whyte (1981) and MacLeod (1995) also show how group norms can define the concept of justice. It can be said then, that the norms and values of any given culture decide when

and how justice is to be carried out. It follows then, that if extending an apology is outside the group norm, it is less likely to occur. What is a violation in one group might not be in another, therefore, apologizing might not be an option.

According to Wendorf, Alexander and Firestone (2002) the construct of justice is addressed in at least two principle paradigms of theoretical work. The first is based on the work of Kohlberg (1984) in terms of cognitive-developmental theory. The second tradition comes out of the social psychological arena and involves Equity Theory (Adams, 1965; Walster, 1978) and characteristics of procedural justice (Thibaut & Walker, 1975; Tyler & Lind, 1992; Tyler & Smith, 1998). The extensive literature on moral development and social justice appears to focus on distributive and procedural justice (Wendorf, et.al., 2002). Procedural justice is considered to be a subset of social justice. This relationship illustrates the previous assertion that types of justice often overlap and tend to be defined by the group defining them. According to Walster 1975, 1978), the distributive justice criterion of equity is perhaps the oldest justice criterion to be studied empirically because it is the one that is the most relevant to most forms of social interaction. Distributive justice focuses on the way goods, services, or resources are distributed within or to an identified group. Procedural justice focuses on the decision-making processes which determine or affect this distribution (Tyler & Smith, 1998). In other words, distributive justice is concerned with the criteria a person feels they need to receive in order for a fair outcome to occur. Procedural justice concerns fair treatment as it relates to making and implementing decisions relating to the outcomes of the process. Other scholars (Deutsch, 1985; Sampson, 1975) argue that people use justice criteria other than equity. Whereas Equity Theory asserts that fair outcomes are those

which have equivalently proportional input and output, or effort put forth by all parties in a conflict. Linkey and Alexander (1998) assert that other people only see as fair those outcomes which have been allocated or distributed to those with the greater need.

Deutsch (1985) notes that some individuals also prefer equality as well as need, a concept which represents distributive justice in the context of group settings, as previously discussed.

Sometimes, according to Kohlberg (1984), procedural justice can be defined in terms which focuses on any formal concerns about the lawful procedures involved in the distributive and procedural processes. In their study of the relationship of moral development to justice, Wendorf, et.al. (2002) found that moral schemas are at least partially correlated with justice concerns. Kohlberg (1984) noted, "...each person's primary aim is to pursue his or her own interests...to maximize satisfaction of one's needs and desires while minimizing negative consequences to the self" (p. 626).

However, he also notes that concepts such as corrective and retributive justice and social convention may also be relevant. Although this study does not investigate *motivation* to apologize Kohlberg's theory might provide fodder for future research, in terms of a party's moral development, ability and motivation to apologize.

G. W. Austin (1986) noted, "justice comprises the conceptual and empirical basis of the moral evaluation of social policy" (p.159). This is an important statement in light of Kohlberg's assertion (Kohlberg, 1984) that his stages of moral development are primarily stages of justice reasoning. In fact, one of the most thorough theories of justice is Kohlberg's stage theory of moral development (Berg & Mussen, 1975). Essentially, it is a six stage theory, in which each stage is a qualitatively more complex way of thinking

about moral issues. Further, each stage is supposed to revolve around certain justice operations, such as concerns over individual rights, duty, fairness, with an individual's development eventually being more highly developed regarding what constitutes fairness, honesty and the like. Damon (1977) and Demetriou and Charitides (1986) note that Kohlberg's theory is a global theory of justice in which distributive and procedural justice are threads related to it. Wendorf, et al. (2002) assert that there is significant work which has examined development in these two categories of justice and that concerns surrounding them "support the proposition that moral concerns are, at least in part, about justice" (p. 21).

Much empirical research on moral concerns conducted within the last quarter century has used Rest's Defining Issues Test or the DIT (Rest, 1979). Briefly, the test is designed to measure the strength of an individual's convictions at each of Kohlberg's moral stages. Although some recent literature has modified aspects of the DIT, Rest, Navarez, Bebeau and Thoma, (1999b) state that they still agree that "[Kohlberg's] aim of the developmental analysis of moral judgment is the rational reconstruction of the ontogenesis of justice reasoning" (1999b, p. 56). That is to say, neo-Kohlbergian theory is still, in part, about justice (Wendorf, et.al., 2002). It is important to address justice as both relationally integral to the law and as distinct from it, whether or not an apology is given could be related to group or cultural norms regarding what is and is not just, not merely what is legal. Because of the numerous areas of justice available to be discussed, some of which have already been mentioned, this review will focus first on an historical view of justice in the classical tradition, then on more contemporary views. As this review transitions from the concepts of apology as it relates to justice, into a legal

connotation of an apology's role in mediation, the traditional paradigm of retributive justice and its newer counterparts, therapeutic jurisprudence and restorative justice, will be examined.

Justice: A Classical View

In order to adequately discuss ADR within the context of the legal arena, it is helpful first to refer to some of the classic historians of law and justice to show that justice is intrinsically related to law. Further, it can be seen that concepts of justice have always existed and have impacted many of the theories of justice we know today. The following are examples of such.

Hammurabi, the ruler primarily responsible for propelling Babylon, the world's first great metropolis, to greatness ruled from 1795-1750 BC (Gadd, 1965; Horne, 1915), and is most remembered for his code of laws, the earliest known example of a ruler presenting to his people an entire body of laws so that all subjects might be fully aware of what was required of them. This set of laws, known as the Code of Hammurabi, regulated with striking clarity, the organization of society (Gadd, 1965; Horne, 1915). According to accounts (Gadd, 1965; Horne, 1915) the Code begins and ends with addresses to the gods, since even a law code was in those days regarded as a subject of prayer. It is interesting to note that in our current legal system, the swearing in of witnesses in a court trial or hearing invokes a type of prayer when the witness is instructed to say, "...so help me God." Hammurabi is quoted in the ending of the famous Codex Hammuarabi or Code of Hammurabi as saying, "That the strong might not injure the weak ...[and] in order to

protect the widows and orphans....I have in Babylon...set up these my precious words written upon my memorial stone..." The Code, relied heavily upon what we might call today, retributive justice, but went farther even, than the biblical "eye for an eye" concept, even when taken in the most literal sense. For example, if a man were to build a house and the house fell down, then the builder was to be slain. If his son was killed in the accident then the son of the builder was slain. Biblical law makes this measure for measure law impossible, in that Deuteronomy 24:16 states that "Fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin" (Scofield, 1945, pp. 242-243). Hammurabi's retaliatory punishments designed to achieve justice takes little or no notice or account of explanation or excuse, with the following exception. According to Horne, apparently the art of swimming was unknown at this time. So, an accused person was allowed to cast himself or herself into the Euphrates River and if the accused person was carried alive to the shore by the current, then that person was declared innocent. If the accused person drowned, then it was declared that the person was guilty (Gadd, 1965). A modern day metaphor for this concept might be the contest over who has the better lawyer.

Hammurabi's form of justice relied heavily upon legalism but it is important to note that it also recognized the importance of intention. For instance, if someone were killed and the killer swore that the killing was unintentional, then in lieu of execution, he was fined. This correlates in some aspects with today's concept of restorative justice to be discussed later.

In reviewing the two hundred eighty two laws posited to exist in the Code of Hammurabi, it appeared that there was no reference to apology. What came closest was

the law which deals with the intent of the heart and mind (Gadd, 1965). It should be noted that, according to Horne, (1915) Hammurabi's laws were not the earliest, as it appears that there are traces of existing laws evident from earlier civilizations.

Hammurabi merely reorganized a legal system which was already long established. There are several other choices for discussion within this classical framework, such as the Sumerian Code of Ur-Nammu (2060 BC), the Roman Law of the Twelve Tables, Germanic tribal laws for violent and non-violent offenses, promulgated by King Clovis in 496 AD, the Laws of Ethelbert in 600AD, and finally the Hebrew culture, which promoted the concepts of peace (Wilkinson, 1998). These will not be discussed in detail, as they are modes of retributive justice similar to those of Hammurabi. Because of the many choices available for discussion it is necessary to choose those classical theories which might add to the foundation of this study of the role of apologies in mediation outcomes.

Walster (1975) depicts a framework for understanding many theories on social justice, based upon the theories and ideas of Aristotle. Equity Theory, is applied to Aristotle's concepts of two main types of social justice: equal and distributive (or proportional) justice (Walster, 1975). He asserts, based upon Aristotelian theory, that there are four general variables affecting a person's or judiciary's willingness to apportion resources equally versus proportionally. They include time constraints, communication cost, potential benefits, and significance for future decisions, which are incidentally, some of the reasons for the rise of mediation as an Alternative Dispute Resolution (ADR) method of dispute resolution. Further, power has a major impact on a society's way of defining what is and is not equitable or in "perfect social justice" (p.4)

Aristotle himself posited that “every state is a community of some kind, and every community is established with a view to some good; for mankind always acts in order to obtain that which they think good...” (Aristotle, 350 B.C.E.). He went on to say, “For man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all,” (Aristotle, 350 B.C.E.). Further, he describes the avarice of men as being unable to be satisfied, for the most part, and that most men only want more and more of what they do not have and subsequently seek to acquire it. Therefore, any reform in the philosophy of justice is “not so much to equalize property as to train the noble sort of natures not to desire more, and to prevent the lower from getting more,” (Aristotle, 350 B.C.E.). Theories of equity, reflected by this statement, relate to apology, in that when an apology occurs the balance of power between parties shifts, and they feel as though an intrinsic equality exists between them (Lazare, 1995b). In fact, Lazare states, “What makes an apology work is the exchange of shame and power between the offender and the offended.” This concept will be expounded upon later in the specific discussion on apologies.

On the nature of justice, it is important to note that in his *Nichomachean Ethics* (Aristotle, 350 B.C.E; Ross, W. D., Trans.). Aristotle regarded friendship as a critical component of a good life, and virtuous habits as being acquired through moral education and legislation (Aristotle, 350 B.C.E.) In *Politics*, (Jowett, B., Trans.) he discusses the family, and the relationships within them, as a basis for the modeling of a just state. Aristotle’s views are particularly influenced by his teacher, Plato, especially his central premise that moral thinking must be integrated with our emotions and appetites and that the preparation for this should begin with childhood education (Aristotle, 350 B.C.E.). Of

particularly relevance to this study is the Aristotelean concept of ethics as a theory distinct from the theoretical sciences. He posits that in studying ethics in order to improve our lives and it can be reasoned that the principle concern of studying it is to discern the nature of well-being (Kraut, 2002).

As Aristotle discusses the virtues, of which justice is one, he recommends that what people need is a complete understanding of how all of these virtues fit together as a whole. In order to apply that general understanding to particular circumstances, it is necessary that we also acquire, through proper upbringing and development of good habits the ability to see or discern which course of action is both appropriate and supported by relevant reasons, in each circumstance. Therefore, practical insight or wisdom in circumstances cannot be acquired only by learning certain general rules, but by practicing those deliberative, emotional and social skills that assist us in putting that general understanding of well-being into practice in ways that are meaningful to the situation (Kraut, 2002). These concepts are entirely congruent with what mediation offers to parties in conflict, and what this study asserts that an apology helps accomplish. That said, Aristotle might well ask, 1) “Is an apology a meaningful option for dispute resolution?” and 2) “How might an apology be integrated into the whole of mediation so as to achieve a resolution which is specific to the parties and the issues?”

Justice: Contemporary Views

The views expressed in the above discussion of classical perspectives of justice do not represent the whole of classical concepts related to justice, just as the following

discussion of more contemporary views does not. The word justice conveys multiple meanings and is often used to represent a wide range of highly related concepts, including fairness, deserving, and entitlement (Feather, 1999). These concepts might be too broad to adequately address people's concerns, so then, it becomes important to look at what is to be judged as fair or unfair, just or unjust. For example, people have concern about the nature of any final outcome of a conflict and the nature of the decision-making process itself and that these concerns be addressed in order for the needs for justice, fairness and deserving be met (Tyler & Smith, 1998). Similarly, people have been concerned about maximizing their own self-interests, a theory congruent with Kohlberg's. Fairness may be equated with self-interest, such that whichever outcomes are favorable are considered fair. Results of this study might indicate that in small claims mediations, this theory is true.

It has been argued that people are concerned about justice not only because they are acting out of personal interests or need for personal gain, but because fair treatment also speaks about one's basic value within the group, (Tyler, 1997, Tyler & Lind, 1992) and therefore, one's self-esteem (Koper, Van Knippenberg, Bouhuijs, Vermunt, & Wilke, 1993). Justice is addressed within this study because of its relevance to the law and to individuals' perceptions of what is and is not just, the concept of just being a component of fairness, which in turn, affects self-esteem which again, in turn, might affect whether or not a party chooses to apologize.

John Rawls is widely regarded as one of the most important and controversial political philosophers of the twentieth century. In *A Theory of Justice* (1971) he relates his concept of justice as "justice as fairness" (Rawls, 2001, p. xi). He is primarily known

for this view, which develops principles of justice to govern a society assumed to consist of free and equal persons, of political and personal liberties and equal opportunities which benefit everyone. (Moellendorf, 2002) writes that Rawl's view of justice, like any conception of justice, is an associational conception. This associational conception pertains to Rawls' initial concern with justice as it relates to relationships between persons within any given group or association. Rawls' theory actually encourages us to perceive society as being a fair and cooperative system from generation to generation over time (Rawls, 1996). He develops this theory of justice from the perspective that people are free and equal. He goes on to say that persons are free when they possess what he refers to as two moral powers (Rawls, 1993), which consist of 1) the capability of having a sense of justice and 2) having a conception of the good. A sense of justice is where an individual has the ability to comprehend, apply and behave according to public perceptions of justice, which characterize fair and cooperative terms. He describes a conception of the good as knowing what is valuable in human life. In his view, this would usually consist of people having a connection or an attachment to others and having certain group affiliations, or loyalties to them.

A Theory of Justice (1971) does address whether justice as fairness is a comprehensive moral doctrine or a political conception of justice (Rawls, 2001). However, *Justice as Fairness: A Restatement* (Rawls, 2001) clearly redefines that Rawl's conception of justice as fairness, is additionally classified as a political conception, in Rawls' view. A discussion of politics is beyond the scope of this study and Rawls' reclassification of justice theory, which now includes the political component, is not germane to this study, but nonetheless important to note because the moral viewpoint is

still relevant, in regard to views concerning reconciliation, apologies and alternative dispute resolution. Whether political or moral, Rawls' view of what constitutes what he calls a reasonable citizen, is relevant in relation to alternative dispute resolution and mediation in that he clearly states that

“Citizens are reasonable when, viewing one another as free and equal in a system of cooperation over generations, they are prepared to offer one another fair terms of social cooperation...and they agree to act on those terms. For those terms to be fair terms, citizens offering them must reasonably think that those citizens to whom they are offered might also reasonably accept them... They must be able to do this as free and equal, and not as dominated or manipulated, or under pressure...” (Rawls, 1996, p.54).

Although he is discussing justice from a political perspective, it is entirely relevant to the process of mediation, since by definition, mediation is a method of dispute resolution which focuses on the process and not an end result (Walker, et. al., 1994). It deals directly with the relationship between the disputing parties. Further, an act of apology is congruent with the second component of being a reasonable citizen in that being reasonable is contingent upon “our recognizing and being willing to bear the consequences of the burdens of judgment” (Rawls, 1996, p. 58), which relates to the concept of taking personal responsibility for the misunderstanding or misdeed, which typically brings parties to mediation. In continuing, Rawls asserts that reasonable persons should be able to disagree without being excessively self-focused, particularly stubborn or willful with prejudices or biases toward one group or another (Rawls, 1996). Sources of disagreement or burdens of judgment, as he refers to them, might include 1) the

conflicting nature and complexity of the available evidence, 2) differences among people concerning the importance of a given issue, 3) conceptual disagreement or vagueness of concepts, 4) the distinct and individual experiences of people, 5) different kinds of normative considerations which are not of equal value or importance to each side of an issue and 6) the tendency of social institutions to “force us to select some values for emphasis or de-select others” (Rawls, 1996, p. 145). Finally, a reasonable person, in Rawls’ view, would not repress ideas, religions or perspectives other than their own, even if a fear existed of an inversion of the power structure, which would culminate in their own repression (Rawls, 1996). This concept relates directly to the importance of the existence of a balance of power in any mediation.

In summary, the work of John Rawls as it pertains to justice and its relevance to this study might be that people should strive to secure two basic principles of justice: 1) a system of basic rights, which sounds much like the life, liberty and the pursuit of happiness ideals of the Declaration of Independence (1776), or which Rawls refers to as liberty of conscience, movement and freedom of religion, and 2) equality of opportunity. In order to bring this about, what he refers to as a value-neutral state, must exist. Resources are not redistributed within such a state unless everybody, especially the most disadvantaged, benefits. This relates to one of the current ideologies in modern day justice systems, distributive justice, which will be discussed more in detail later in this chapter. In order to run a value-neutral state, three components must be in place: 1) being a reasonable person, which was discussed in the previous paragraph, 2) having common ground or at least an adequate bridge to help close the gap between cultures, and which recognizes diversity without discrimination, and 3) the importance of each citizen being

active in debate, lawmaking, and if necessary, constitutional revision. When these components are in place according to Rawls, they help ensure that everyone has an opportunity to become aware of and increase his or her concepts of what is good, so that each person remains autonomous (Rawls, 1996).

Why are his theories important to the study of mediation and conflict resolution? Rawls' theories are important as a framework upon which to reflect, as we study conflict resolution using alternative methods because several of the components contained within his theory of justice as fairness are entirely congruent with the concepts of mediation as an alternative dispute resolution option. Mediation is value-neutral, respects the diversity and views of the parties involved, encourages active participation in the process of mediation, makes a primary goal of establishing a balance of power or sense of equality between parties. In fact, Walker, et. al. (1994) states, "Whatever you do, establishing disputant equality is the single most important action you must take in a mediation session" (p. 24). Finally, and equally as important in the mediation process, is the reality that power balance gives each respective party in the mediation autonomy in decision-making and formation of agreements, which they alone construct.

Equity Theory and Justice

According to Wendorf, et.al. (2002) Equity Theory has been studied most in terms of distributive justice criteria, and is probably the primary criterion and one "relevant to most forms of social interaction" (Walster, 1978). Equity Theory employs the notion that a fair outcome is one which is proportional to the amount of effort made

or input given by both parties to a distributive process (Walster, 1978). This is congruent with distributive and procedural forms of justice. Other scholars (Deutsch, 1973, 1985; Sampson, 1969) argue that individuals use justice criteria other than equity. For example, in some cases people may see outcomes as fair only when the person with the most need is favored. In procedural processes, Thibaut and Walker (1975) specified two criteria: decision control and process control. Decision control refers to whether an individual has a say in the final decision or outcome of a given matter, and process control addresses whether or not the individual has a say, or voice *at all* in the decision-making process (Folger, 1977). Tyler and Smith (1998) identified six additional criteria for procedural justice: 1) consistency, 2) bias suppression, 3) accuracy, 4) correctability, 5) representativeness, and 6) ethicality. In short, the consistency criterion maintains that fair procedures are consistent over time. Bias suppression emphasizes the importance of the neutrality of the decision maker. Accuracy refers to informed decision-making, with all available information presented. Correctability addresses the grievance and appeal process for correcting past wrongs and the representativeness criterion requires participatory decision-making and representation in that process. Lastly, that fair procedures are only those which do not violate the individual's personal standards. These criteria are congruent to those for both the mediation and the mediator and are clearly set forth in the *State of Oklahoma Alternative Dispute Resolution System Mediation Training Manual and Resource Guide* (Walker, et. al., 1994). Although not addressed in this study, the fact that Tyler (1997) notes that bias suppression (neutrality), trustworthiness of the decision-maker and status recognition, or in other words, being treated with respect

(Tyler, 1997) are especially critical determinants of the perception of fairness and is an area worthy of future research.

Because so many types of justice exist, it is important to focus on those most relevant to this study. Further, because of the interrelation aspect of the variables in this study, it is not possible to exclude them from one another. For example, fairness relates to justice which relates to morality and belief systems, which relates to perceptions which relate to self and identity, which relates to self-esteem, which relates to whether or not apologies occur, and so on. Therefore, by discussing aspects of some of the existing types of justice it can be seen that elements of each overlap with one another and will do so again as the constructs of retributive and restorative justice are explored. This will provide a foundation for the discussion of how an apology does or does not relate to each, respectively, since the goal of apology is to restore dignity and social harmony, goals which are clearly congruent with the goals of justice (Bennett & Earwaker, 1994).

Injustice

“That’s not fair!” is an example of the type of phrase which frequently contributes to the development of a conflict. Many examples might come to mind, such as paying for a service we did not get or which was performed unsatisfactorily, inequity in a divorce settlement or an accusation of wrong doing. These all have to do with issues of justice and fairness and often cause conflict, which can lead either to needed changes that reduce the perceived injustices, or contribute to greater feelings of injustice or feelings of unfairness. Any discussion of justice would necessarily be benefited by addressing its

antithesis. Tyler and Smith (1998) note that “one of the most striking findings of social justice research is that people are seldom at a loss when asked whether or not an allocation, a procedure, or a punishment is fair” (p. 602). However, such research is conceptually limited because it often does not represent the way people really feel about justice (Wendorf, et. al. 2002). Social psychological research has tended to focus on individual reactions to certain situations, which are important, personally, to them (Wendorf, et. al. 2002). Rawls’ (1971) principle concern in this matter was to establish what criteria should be used to define fair and just outcomes and procedures. However, some have argued, as does this researcher, that individuals have their own idea of what justice and fairness is, and what outcomes are considered as fair, by them. People who are in some kind of conflict usually think that whatever outcome they support should be considered fair (Deutsch & Coleman, 2000). According to Wendorf, et. al. (2002), individuals often base that view on their particular personal values, of which moral development could be considered a contributor.

Scholarly literature on injustice reveals several foci of attention (Deutsch, 1985; Deutsch, 2002; A.Freud, as cited by Hall, 1982, Gurr, 1993). These include distributive, procedural, retributive and reparative justice. Deutsch and Coleman (2000) assert that most of these foci concerning injustice revolve around distributive justice, procedural justice, the sense of justice, retributive and reparative justice, and the scope of justice. Distributive justice is concerned with the criteria which leads a person to feel that a fair outcome has taken place. For example, children notice when a sibling receives a larger piece of cake. Procedural justice is based upon concerns about fair treatment in the making development and implementation of decisions and agreements which determine

outcomes. An example might be questioning the process when an elected official loses an election. Procedural justice would dictate concern over whether or not the official was treated with respect and dignity and whether or not it is perceived that the election was lost fairly. The sense of justice, which centers on what factors may determine whether a perceived injustice is experienced that way may be described thus: A person on the jobsite or in a marriage perceives him or herself to be doing more than what they perceive to be the fair share of the work, and if so, what will determine whether or not he or she feels it is unjust that this is taking place. Retributive and reparative justice focuses on how one responds to the violation of social or moral norms. This might be demonstrated by an episode concerning racial or sexual discrimination. And finally, the scope of justice concerns itself with who, exactly, is included in the moral community in question and who is perceived to deserve a fair outcome. Most people would not include rats or insects as part of a population deserving of fair outcomes, and likewise, some people think of others who differ from themselves, religiously, racially, in sexual orientation or otherwise, as a population distinctly undeserving of justice and fair outcomes. Deutsch (2002) notes that these are often overlapping concepts and discusses each in depth.

The relationship between conflict and injustice is a bi-directional one (Deutsch, 2002). Much conflict is bred through injustices, whether real or perceived, and destructive conflict in turn, breeds injustice. According to Deutsch, preventing destructive conflict is a combined effort of training in constructive conflict resolution and proactive efforts to decrease injustices, which are a major part of our social world at all levels-- interpersonal, intergroup and international. This requires that various societal organizations and institutions change in a positive direction toward recognizing and

honoring human equality, reciprocity, shared community and nonviolence. The trend of the current legal paradigm of retributive justice and the new restorative approach give support to this construct.

Again, it is not necessary for the purposes of this study, to engage in a lengthy discussion of the various concepts addressed in the previous paragraphs, but only to note that if any of the above conditions exist, an apology may or may not occur, depending upon a person's individual concept of justice or injustice. What is important to address more fully are the paradigms of retributive and restorative justice, since apology, by its nature, is particularly suited to the latter paradigm, just as mediation as an alternative dispute resolution option, is. Further, the concepts of justice, injustice and the respective criteria for these, which have already been addressed, naturally lead the discussion of mediation and apology toward the legal arena, where literature regarding apologies was contained within articles specifically pertaining to the retributive and restorative paradigms.

Retributive vs. Reparative Justice

Today, the problem of solving crime and various legal dilemmas is satisfied primarily through a legal system which is largely based upon an adversarial or retributive system of justice (Cavanaugh, T., 1998; Charles, D. J., 2001; Deutsch, 2002; von Hirsch, A., Roberts, J., Bottoms, A. E., Roach, K., Heller, A., & Schiff, M., 2003; Keeva, 1999; Wray, H. 1999; Zehr, 1995). Historically, all systems of law required the redress of

wrongs, and justice demanded some kind of infliction of pain or loss because of the wrongdoing (Wikipedia, 2004).

Although there currently exists a contemporary therapeutic culture about social justice, Charles (2001) posits that justice is the primary virtue by which every moral society maintains coherence, and that it requires that crimes against humanity be punishable. He ventures that these crimes incur a public debt which can only be addressed adequately by retributive justice, and that the moral outrage expressed through this form of justice is one that is rooted in moral principle, not just emotional outrage or hatred. Two ethical realities exist in terms of the nature and extent of the retribution: 1) the degree of wrongness of the criminal act itself and 2) the degree of the criminal's responsibility for committing the act (Charles, 2001). Retributive justice, in essence, requires that wrongdoers *must* be subject to punishments and these need to be proportionate to their crimes (Charles, 2001). It is important to note that he makes a distinction between retribution and vengeance, a construct briefly addressed in this study, in terms of whether or not an apology alone would have served as reparation for the offense committed. Although not measured in this study, vengeance and retribution have a relationship. The distinguishing factors between them are that retribution addresses an objective wrong and revenge lashes out at real or perceived injuries (Charles, 2001). He contends then, that retributive justice has a goal of greater social good and does not delight in punishments meted out. He even posits that retribution is impersonal and impartial, not subject to any particular personal biases. (Interestingly, Lady Justice *is* depicted blindfolded.) Charles postulates that the impulse toward retribution is innate to

human beings, but should not be, in any way, considered a lower impulse. In essence then, retributive justice is necessary for a civilized society.

In contrast, Cavanaugh (1998) notes that the restorative justice paradigm was identified as a major trend in the court system in 1997, and is a new movement in the fields of criminology and victimology, which acknowledges that a crime causes injury to people and communities and insists that justice repair those injuries, while all parties participate in the process. It is similar to mediation in that it emphasizes the process, but adds the dimension of emphasizing the outcome, as well.

In the United States we are familiar with the retributive model, which focuses on which laws were broken, who broke them and what punishment will take place. Restorative justice, on the other hand, recognizes three components to crime: 1) the offender, the 2) victim and 3) the community. According to Cavanaugh (1998), to adequately serve the needs of these components the current criminal justice system needs to become committed to restoration, healing, responsibility and prevention, services which the restorative model provides. Von Struensee (2000) relates that reparation is a construct capable of widening the current legal model, wherein the adversarial approach can thwart the goals of vindication, reparation and justice. The ensuing discussion about the therapeutic jurisprudence model and holistic law will show these concepts to be congruent with von Struensee's construct, and an "umbrella" of sorts, for the restorative model.

Wilkinson (1998) includes mediation as one of the facets in the national restorative justice movement. In short, these concepts distinguish the retributive from the restorative paradigms from each other in that the retributive model defines the crime as

an act against the state or authorities, to whom the offender is accountable.

Accountability is equated with suffering in that if the offender is made to suffer enough, then accountability has been accomplished. The victim is actually considered to be peripheral to the process of responding to and resolving the offense and the offenders are defined solely by their deficits and are labeled with the nature of their respective crimes. (I.e. “rapist,” “murderer,” “thief,”) This terminology makes the offender inseparable from the crime or “extrinsically intertwined (von Struensee, 2000, p.8) In the restorative model, the crime is defined as an act against people and their communities and the offender is accountable to both. The crime is viewed as external to the offender and his or her identity. The offender then, is a part of the holistic legal approach, wherein the crime is merely a subcomponent (Burkhardt, 2003). In this model, accountability is characterized as taking responsibility for behaviors and for repairing the harm done by the crime. Importantly, the outcomes of the system are measured by how much *actual reparation* was achieved. Further, offenders are defined by their capacity to take responsibility for their actions and for changing their behavior by participating in the process of recovering losses caused by their crime, and the subsequent healing needed. Finally, the crime has both individual and social dimensions, in that the criminal behavior reflects a personal choice. Currently, most restorative justice efforts are initiated and conducted by a variety of social service agencies, schools and law enforcement, and have three components in common: 1) healing, 2) victim-offender mediation, and 3) apology. These components are well-suited to the therapeutic jurisprudence paradigm discussed below.

Therapeutic Jurisprudence

Chatterjee and D'Aprix (2002) note that norms become customs, which eventually become laws. The retributive model of law has resulted. However, the practice and attitude of law has been undergoing a paradigm shift (Winick, 2000), wherein therapeutic jurisprudence, holistic law and other alternative practices are now receiving more attention. According to Winick (2000) therapeutic jurisprudence is the study of the potential healing effect which law might have on a clients, and draws from tools and concepts from mental health and behavioral sciences traditions. New judicial models which have been termed problem-solving courts, use therapeutic jurisprudence as a foundation. Although originally applicable to mental health courts, therapeutic jurisprudence is now a paradigm more broadly applied to other legal areas. It is entirely congruent with the relatively new concepts affecting the legal arena, such as preventive law, holistic law, collaborative law and the tendency toward using alternative dispute resolution techniques, such as mediation.

Van Zyverden (2001) asserts that the judgment of which Charles (2001) posits as necessary, "is the plague of our time...and [which] is killing us." (p.1). According to him, what human beings simultaneously desire and fear most is judgment, because each wants to prove that there is some kind of objective right within them to which they are entitled. If we are right, he reasons, then we are somehow, vindicated, and can avoid what we perceive to be an ultimate judgment for being wrong. It assures us that we are somehow on the right, not wrong path. He contends that rules and laws give us a sense of what that objective right is, although there will probably never be a confirmation of that objective

right. By his assessment, our current legal system has conditioned us to believe that justice is actually concerned with objective right, and can be identified as such, and that if the objective right can be identified, then a matter can be solved.

It has been said that judges often say that if they do their jobs right, no one goes away happy (Judge Thornton Wright, Jr., personal conversation, July, 2003.)

Experientially, this researcher has observed that no one walking into the courtroom seems to be happy. Therapeutic jurisprudence avails itself of ADR possibilities, and asserts that attorneys be alert to knowing that sometimes, what their clients want is not necessarily what they are suing for. They want more than financial compensation, especially when they feel they have been wronged. For some, an acknowledgment of wrongdoing and a subsequent apology, is more important (Winick, 2000). Keeva (1999) notes that the role of apology within the creative problem-solving law practice, is part of the new paradigm of the holistic practice of law, and contributes to the well-being and emotional expression of clients.

Empirical studies of how litigants typically view the judicial experience have led to the development of literature on the psychology of procedural justice (Winick, 2000). Typically, those who felt they that they were treated fairly and with respect reported a greater satisfaction with the judicial process. This is congruent with the research, which has been increasing in the past few decades, exploring those subjective evaluations of persons interacting with the legal system. This is an important finding because it has already been noted that people focus on procedural justice in lawsuits wherein the outcome might be unclear and tend to be more satisfied with the process when a sense of fairness, justice and respect are present (Tyler, 1997). Tyler notes that interviews with the

public suggest that overall, people are extremely dissatisfied with the justice system and that public opinion polls show that the public generally does not hold lawyers and judges in high regard. While there are many reasons for this, the ones to be noted include too much leniency by the courts, failure to control crime, letting criminals off on technicalities, making too many errors in judgments, giving defendants too many rights, and court congestion and subsequent inability to access legal remedies in a timely fashion. While these issues are typically, aimed at criminal rather than civil courts, Tyler (1997) notes that there is no evidence that the public makes any distinction between the two types of court. He also notes that studies show that those with greater personal experience with the court system have more negative attitudes than those with less experience. An important point made by Tyler, is that only those cases involving anger, intractable problems, or both, end up in formal adjudication, but that overall, most disputes are resolved by the parties themselves, a primary tenet of ADR mediation. In efforts to reduce public dissatisfaction with the court system due to the above-listed complaints, is the suggestion that there be a greater use of alternative resolution forums, such as mediation (Tyler, 1997).

Category IV: Conflict Resolution Research

Historical Overview

In order to discuss the research on apology, mediation and the relationship of the two, it is helpful to have an understanding of how the field of conflict resolution research began. The history of conflict resolution as an applied behavioral science began in the

1940's with social psychologist Kurt Lewin and his students at Yale University (Dana, 2001). Through his development of field theory, the dynamics of conflict became areas of interest to many social psychologists, researchers and academicians. At the height of the Cold War, in the 1950's and 1960's, when the conflict between superpowers threatened human survival through nuclear warfare, a group of pioneers from multiple disciplines began to see the value of studying conflict as a general phenomenon, whether it was international, domestic, between groups or between individuals. They saw the benefit of utilizing principles, which were beginning to evolve in management, industry, social work, social psychology and communications theory to better understand the nature and dynamics of conflict. A few individuals dedicated to increasing the conflict resolution knowledge base, began to establish research groups, formal centers in academic institutions, and professional journals to develop new concepts in the early years. However, they were not taken seriously in the United Kingdom, according to the Centre for Conflict Resolution, (2004). The international relations profession, already in place, had its own systemic view of understanding international conflict and thus, did not view this new interest as viable, nor was the combination of analysis and practice inherent in the newer approach congruent with the established traditions of scholarly institutions. Nonetheless, the new ideas attracted others and the field grew and developed further into the 1970's and 1980's. Further, as is often the case with new disciplines, the new field of conflict resolution research began to develop its own subdivisions and areas of expertise, ranging from international crises to experimental game theories, to negotiation and mediation. Since much of the field's development originated out of peace research and non-violent movements, (some of the pioneers) in the field who have contributed

strategically to the development of theory and practice of conflict resolution were Mahatma Gandhi, Kenneth Boulding and John Burton, among others (Centre for Conflict Resolution, 2004).

The failure of the peace, socialist and liberal internationalist movements to prevent the outbreak of WWI motivated many people to develop a “science” of peace, if you will, which they possibly believed would provide a more solid basis for preventing future wars. Related fields, such as organizational behavior and labor-management, which would eventually contribute to the development and use of alternative dispute resolution, began to enrich the conflict research arena, as well. Those contributions took conflict resolution from the traditional distributive bargaining construct to integrative bargaining, which advocates a mutual gains approach to negotiation.

Many regard Gandhi and his movement to win India’s independence from Britain as a significant inspiration to modern ideas about constructive conflict management. Gandhi’s objectives in his satyagraha (‘struggle for truth’) were to make latent conflict manifest by peacefully challenging existing social structures, which were highly inequitable and power imbalanced. With this model of conflict, the objective is not to win, but to achieve a higher level of social truth and a healthier relationship between antagonists. Gandhi was a profound advocate of non-violence or ahimsa in conflict resolution and is perhaps exemplified best by his famous quote, “bring your opponent to his senses, not to his knees” (Juergensmeyer, 1984, p. 98).

One of the earliest conflict resolution writers, Kenneth Boulding, was personally motivated as a member of the Society of Friends (Quakers), and professionally as an economist. He and his wife formed a partnership which was to make a seminal

contribution to the formation of peace and conflict research. Boulding and a small group of academics, which included the mathematician-biologist, Anatol Rapoport and the social psychologist Herbert Kelman, began the *Journal of Conflict Resolution (JCR)* in 1957, and set up the Center for Research on Conflict Resolution in 1959. Initially, for Boulding, conflict resolution indicated the necessity for a knowledge base in which social data stations would exist, which would form a system similar to a network of weather stations. These centers would theoretically, gather a range of social, political and economic data and produce indicators of the social temperature and pressure and predict what might be termed cold fronts, or warm fronts, respectively. These would then be used as a preventive measure, based upon the temperature of the social climate (Centre of Conflict Resolution, 2004).

Finally, a major contributor to the founding of conflict resolution research is John Burton, previously mentioned in Category II, Social Psychology. He broke away from sociological traditions regarding conflict as dysfunctional, and instead, viewed it as an intrinsic to human relationships (Burton, 1993). He began to develop his theories of controlled communication, or the problem-solving method, in international conflict. He and Azar (1990) later developed the concept of protracted social conflict, which combined both domestic-social and international dimensions and formed a sort of hybrid model of conflict between interstate war and purely domestic unrest. This model preceded much of the post Cold War re-evaluation of international relations thinking, and was claimed, by Burton, to be a decisive paradigm shift. Above all, his belief in and application of Basic Human Needs Theory, is what made it possible for intractable conflicts to be unlocked.

Power

One of Boulding's most influential ideas was the concept of power (Boulding, 1989), a principle in the dynamic of apology. In everyday language, the term "power" is ambiguous. In one way it means the power to command, order, enforce or coerce. This is termed hard power. Soft power is the power to induce cooperation, to legitimize (validate), inspire or persuade (Centre for Conflict Resolution, 2004). Hard power has always been important in violent conflict, but soft power may be more important in the management of peaceful conflicts. Boulding (1989) refers to the former as threat power. This might be like saying, "Do what I want or I will do what you don't want." He distinguishes between two types of soft power: a) exchange power (do what I want and I will do what you want) and b) integrative power, which is associated with persuasion and transformative, long-term problem-solving. This is like saying, "Together we can accomplish something that is better for both of us," a collaborative concept which would eventually become inherent in ADR mediation. Menkel-Meadow (2001) asserts that although some resist and even condemn mediation because of what they perceive to be power inequalities, mediation is the most appropriate method for honestly dealing with those inequalities and for meeting the needs of unequal parties.

The concepts of power balance need to be addressed as essential to the atmosphere conducive for an apology to take place. According to Lamb (1997) the power relations between the offended and the offender must be kept in mind. In discussing forgiveness, Lamb asserts that if we are to move beyond current psychological views of forgiveness as something which primarily serves the forgiver, then we must consider it an

interaction. If this is assumed to be true, then it seems that something should be required of the wrongdoer. She asserts that in current conceptions, the victim's act of forgiving seems to be set apart from the decision the wrongdoer must take if he or she is to admit any responsibility for the wrongdoing. An apology contributes to that process, according to Lamb, but is not necessarily required. The point she seeks to make is that once the apology takes place, if it is sincere, then there is a pressure for the victim to forgive, which is a form of power. The apology makes the victim beholden to the perpetrator, according to Lamb. Goffman (1956, 1971) noted that apologies are scripted events, like so much else people do. In fact, the important aspect of the scriptedness of apologies is that there is that pressure to forgive, and the potential to manipulate, which is also a form of power, according to Lamb. To Lamb, it is a form of power because being a victim can afford a person the opportunity to be pure, virtuous, worthy of sympathy and possibly even martyrdom. Therefore, the scriptedness of the apology/forgiveness interaction is not only about social expectations, but power relations. This victim-offender dyad is a dichotomy wherein one is characterized as evil, while the other is pure and idealized. Once the sincere apology is made by the perpetrator, then the power balance shifts and the victim typically is required by society to forgive (Lamb, 1997). Apologies then are power plays used to manipulate the victim into forgiving, when viewed from this context. Although not a variable within this study, it might be important in future research to address forgiveness and apology in light of power balance.

Conflict Resolution Methods and Strategies

The debate over whether conflict should be managed, mediated or resolved, is important to the clarification of what comprises mediation and why an apology might be better suited to it than the other ways of dealing with conflicts. There are numerous models from which to choose when deciding how to resolve conflict. Conciliation, negotiation, arbitration, mediation are all forms of alternative dispute resolution tools or options. Mediation is the form used in this study and the variable in which the outcome might be shown to be affected by an apology. When noting the various types of third-party approaches, the literature tends to concentrate on mediation and arbitration (Wall & Callister-Roberts, 1995). It is not necessary for the purposes of this study to enumerate the various forms, and to remember that no one model can do all things for all people, however, two particular models of mediation, problem-solving and transformative, will be addressed, as they bear upon the goals for mediation outcomes, and apology might be more conducive to one more than the other. First, a brief history of Alternative Dispute Resolution (ADR) is in order.

Alternative Dispute Resolution (ADR)

The metaphor for American mediation is the contract (Engle-Merry, (1987). According to the Delaware State Courts Internet website (2004), settlement has been and continues to be the primary means of resolving conflicts or disputes in the United States. Mediation developed out of the alternative dispute resolution initiatives, which were

created to address conflict and the need for settlement, through other means than the legal system, in response to the labor-management disputes of the nineteenth century.

Mediation, along with the traditional arbitration approach, was an outgrowth of these labor disputes. It was essentially unheard of outside of the labor dispute arena. Additional state labor mediation services were added and it soon followed that "stable industrial peace could be achieved through the settlement of collective bargaining disputes" and [could] "in turn be advanced through conciliation, mediation, and voluntary arbitration" (Delaware State Courts, 2004). A group of lawyers and jurists soon became involved in advocating for conciliation instead of adjudication, focusing on the cost-effectiveness, speed and equity of mediation as an alternative. Informal alternatives, such as mediation, were advocated for mediation's ability to streamline the processing of court cases and to provide quicker, less expensive resolutions (Delaware State Courts, 2004). Mediation was also advocated as a measure to increase access to dispute resolution among parties, who, prior to this option, might have let their conflicts escalate and fester (Delaware State Courts, 2004).

Critics of alternative dispute resolution through mediation, using neutral third parties rather than attorneys in attempts to structure outcomes, debated that seeking settlement through these alternative means, instead of through formal adjudication, only created inequities. Legal historian Jerold Auerbach (1983) commented, 'Compromise only is an equitable solution between equals; between unequals, it inevitably reproduces inequality' (as quoted in Delaware State Courts History of Alternative Dispute Resolution Internet website, 2003, p. 2). Out of these debates over the value of alternative dispute resolution came the movement now known now as Alternative Dispute Resolution or

ADR. According to United States Office of Personnel Management Alternative Dispute Resolution Guide (2004), alternative dispute resolution consists of a number of a variety of approaches to informal intervention, using a third party neutral, with mediation being the most used now, and the most popular, enjoying an 80% -85% success rate, according to Duhaime and Company (2003).

Mediation

Ciraco (2000) notes that there are four basic reference points along the spectrum of dispute resolution and they are 1) negotiation 2) mediation, 3) arbitration and 4) adjudication. He posits that mediation is probably the most beneficial method on the spectrum, to the individual, in that it is interest based and tailored to meet the needs of disputants than the other forms. This is so, according to him, because it is flexible, cost-effective, time-sensitive, able to deal with complex issues (i.e. family and divorce issues), is confidential and oriented to the individual, in terms of allowing the airing of grievances and release of attendant emotions. In order to appreciate the benefits of mediation, it is important to understand the types of conflict resolution strategies available.

Anthropologists developed a simple model to describe the dispute resolution process (Ciraco, 2000). In effect, the model describes the particular form chosen by an individual is directly related to what type of conflict needs solving. Negotiation is at one end of a spectrum of the above four, and can be any type of communication, direct or indirect where parties who have some opposing interest to discuss with each other, bypasses arbitration and/or adjudication. Mediation is the process by which parties, with the help

of a neutral third-party or parties, systematically define their issues at hand in order to find options, consider alternatives and reach consensual agreement. In essence, the parties structure their own agreements. Arbitration involves a neutral third-party, who acts as judge, after hearing the details from the disputants. Finally, at the other end of the spectrum is adjudication wherein a judge within a legal setting makes the decision for the disputants. Disputants who value or seek to maintain their relationship with one another typically select a negotiation or mediation because of the collaborative nature of these methods (Ciraco, 2000).

Walker, et.al. (1994) describes mediation as an alternative to litigation. If the mediation is not successful, in terms of agreement, then court action is still an option. Congruent with Ciraco (2000) they assert that mediation is not conciliation or arbitration, since neither of those methods of resolution need the consent of the disputing parties. Mediation, in fact, adds a level of consent and can bring parties together in a face-to-face negotiation, after they have mutually consented to meet to resolve their dispute. Further, the parties design their own agreement. They make an important assertion that “the key to a successful mediation experience for all parties in the neutrality of the mediator conducting the session” (p. 8). Further, they assert that mediation is a process and not an end result. As a mediator, this researcher has often been reminded to trust the process, for it is in the process that options are generated, agreements constructed and multi-level transformation is achieved. Transformation can happen because the mediator assists the parties on focusing on the future rather than what happened in the past, punitive measures, who is to blame or on getting revenge. In this way, mediation is conducive to the Bush and Folger (1994) model of transformative mediation. Della Noce (2002) has

noted that the mediation field has come under attack and criticism because of its lack of an articulated theoretical framework. In other words, the where, when and why are not clearly developed as a theory for explaining the practice of mediation. However, she posits that there *are* coherent frameworks, especially in the Bush and Folger model of transformative mediation, the harmony framework and the problem-solving framework. She adds that part of the reason for this criticism is that the lack of scholarly mediation theory has produced an overemphasis on the acquisition of skills and techniques and a kind of blind reliance on how to perform the process. (Della Noce, 2002). As a consequence, the development of technical training and skills acquisition by the mediator has de-emphasized the importance of understanding goals and values in the mediation process. In her view, this how-to approach fails to foster a serious examination of the reality that the mediator and his or her practices can and do influence the parties' conflict.

Problem-Solving Model

Three groups of scholar-practitioners were involved in the development of the theory and practice of problem-solving workshops and include a group based at University College in London and at Yale and Harvard Universities respectively. According to the Department of Peace Studies at the University of Bradford's Centre for Conflict Resolution (2004), the following components are understood to be part of facilitated problem-solving: 1) participants are influential but non-official figures from the conflicting communities, 2) the facilitators are knowledgeable academics, whose role is to structure the discussion and feed information from their general experience and

knowledge of conflict, but to fundamentally allow the disputants to determine the outcome of the meeting, 3) the meetings are confidential and non-binding and are seen to contribute to official-level negotiations but in no way substitute for them, 4) participants are encouraged to listen to one another's needs, concerns and perspectives without judgment, 5) misperceptions and misunderstandings are cleared up, enabling disputants to acquire new insights into each other's goals, intentions and fears, 6) the conflict is jointly explored and analyzed, producing creative, win-win options that meet everyone's needs, and 7) these new insights are then fed into the policy formation process. This approach had some drawbacks, including difficult questions of ethics and evaluation, but is now part of cluster of approaches known variously as interactive conflict resolution, third-party consultation and facilitated dialogues, which use many of the components of the problem-solving approach, which has had a fundamental impact on introducing the win-win, problem-solving and mutual gain vocabulary of conflict resolution, particularly detailed in the work of Fisher and Ury (1991); (Ury, 1993).

Interestingly, the Program on Negotiation (PON) at Harvard Law School has contributed much to the ongoing research in mediation as a conflict resolution tool. This is interesting, since the legal arena has been largely adversarial and based on a retributory model, aspects which mediation typically does not embrace. It appears that our current legal system, based upon the retributive form of justice, is not entirely adequate. The retributive form of justice, prevalent in the current legal system focuses on problem-solving, not the emotional needs of clients for recognition and empowerment, upon which the Bush and Folger (1994) transformative model is built.

Transformative Mediation

Although this study does not address mercy and forgiveness as variables, they are related to mediation outcomes and apology, and the views of Lederach (1989) are congruent with most of the criteria for apology as used in this study. His views on transformation also parallel those of the transformative model of mediation as proposed by Bush and Folger (1994). Although developed independently for use in different contexts, the views are strikingly similar. The work of Lederach (1989, 1995, 1997, 1999) has been primarily with international, intractable conflicts with warring ethnic groups, whereas the Bush and Folger (1994) model was developed for use primarily with two-person conflicts, such as those we find in family and divorce mediations. The similarities can be seen in Lederach's call for the acknowledgment of wrong done, which is parallel to Bush and Folger's paradigm of recognition and empowerment of the disputants to make matters right again. Lederach defines empowerment as overcoming obstacles and making possible the movement from an attitude of "I cannot" to one of "I can." This is similar to Bush and Folger's (1994) concept of empowerment, defined in Chapter I, Definition of Terms. Lederach's transformative peacemaking empowers individuals and nurtures mutuality and community, which can be seen as synonymous with Bush and Folger's mutual recognition terminology. Although it appears that little or no empirical evidence is available to support the concept that the transformative model of mediation is more conducive to an apology occurring, it would seem that due to the components of recognition and empowerment contained within its construct, it would be,

since recognition is a key component in the criteria for an apology and empowerment is often the result of that.

Communication

Several theories of communication could be discussed in light of this study, which would be congruent with the mediation process. One model is the Sender-Message-Channel-Receiver (SMCR) model of communication, which describes the relationships of the apology-sender's motivation, the offended person's feelings and the content and outcomes of the message itself (see Figure 1) developed by Flanigan (1992). In the SMCR model, the perfect apology would encompass the true feelings of the sending, especially guilt and sorrow for the wrong-doing, and then the sender expressing it in the form of an apology (the message) to the victim or offended person, who feel anger, sadness and possibly the fear of being hurt the same way again. Upon receiving the apology, the receiver would then respond to the sender's feelings, while the offender (the sender) would listen and accept the punishment for the wrong done. The offender then assures the offended that the behavior will not happen again and the receiver chooses to trust that assurance. In this way, both the offender and the victim can, Flanigan posits, release their pain and sorrow and begin the reconciliation process on behalf of the relationship. This model assumes that the relationship is important to both the offender and the offended, a construct addressed within this study.

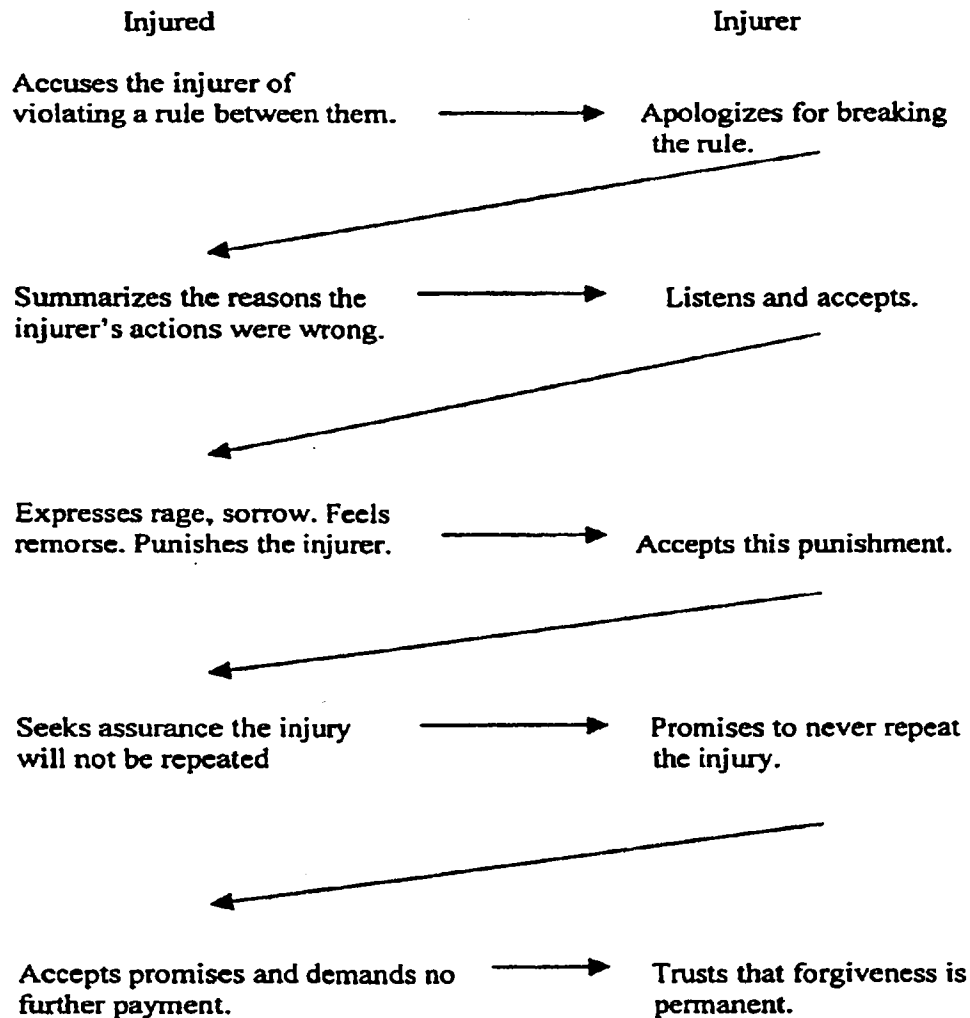


Figure 1. Sender-message channel receiver communication model.

One other model, the Non-Violent Communication (NVC), proposed and developed by Rosenberg (1999), is also relevant to this study, because of its congruence with the Transformative mediation model. Rosenberg asserts that the purpose of nonviolent communication is to strengthen our ability to respond compassionately to ourselves and others, because it guides and encourages us to reframe how we express ourselves. Further, it encourages us to listen and hear others by focusing our consciousness on four skills, which he categorizes as what we are observing, feeling, needing and requesting. Rosenberg posits that because of this model's emphasis on deep

listening, respect, attentiveness and empathy are fostered, and a mutual desire to give from the heart, is engendered. He posits that this transformative process is more than a process or even a language. Because our cultural conditioning often hinders our getting what we want, NVC serves as a flow between ourselves and others.

Although the NVC approach is congruent with the Transformative mediation model it brings little new to the field, except that it is founded on language and communication skills which enable us to remain human, even under extenuating circumstances. The intent of the nonviolent communication construct is to remind us about what we already know: a) how human beings were meant to relate to one another, and b) to assist them in bringing that about. This communication form also assists us in living in a way that concretely manifests that knowledge (Rosenberg, 1999). NVC is a clear and effective model for communicating in a way that is cooperative, conscious and compassionate--characteristics which the literature has revealed to be assets in mediating conflict.

Davis (1989) describes effective mediators as having respect for the parties, which can be shown in a variety of ways, such as polite behavior, attentive listening, patience and acceptance. An even more powerful mediator characteristic in terms of efficacy is a positive attitude toward conflict itself and an emphasis on its potential for rejuvenation. Nonviolent Communication skills are built on Rosenberg's (1999) applications of these concepts and is comprised of a four component model process which encourages people to 1) observe what is actually happening in a situation and to do so without judgment or evaluation, 2) identify how and why we are each feeling as we do, 3) to identify what needs are connected to how those feelings and 4) to ask for what

would enhance or enrich our lives by making a specific request. This four-part approach would assist the mediator, as well.

Conflict: Resolution, Management or Transformation?

Many conflict theorists and practitioners advocate a goal of conflict transformation instead of conflict resolution or conflict management (Burgess & Burgess, 1997; Lederach, 1995). According to them, conflict transformation is quite different than the other two. Lederach (1995, 1997) asserts that the term conflict transformation reflects a better understanding of the nature of conflict itself. Conflict resolution implies that conflict is not good, that it is bad and hence, something to be ended. It is sometimes also assumed that conflict is a short-term process which can be permanently resolved through mediation or some other intervention method. Conflict management correctly assumes, according to Lederach, that conflict is a long-term process which often cannot be resolved either quickly or permanently, but the idea of managing the conflict implies that people can be directed or controlled like objects. It also suggests that the goal of intervention is the reduction or control of volatility more than dealing with what is actually causing the conflict to begin with. Conflict transformation, asserts Lederach, does not suggest the elimination or control of conflict, but to work with what he calls conflict's dialectic nature. He means by this that social conflict is created by people, who are involved in relationship with one another, in some way or other, and that once the conflict occurs, it changes or transforms those people, events and relationships which started the initial conflict.

Conflict transformation is also a prescriptive concept (Lederach, 1995). When and if left alone, then the consequences of conflict may be destructive. It is possible, however, that these consequences can be transformed so that relationships, social structures and self-images can improve as a result of conflict, rather than be harmed because of it. In order to do this, it usually involves transforming or reframing perceptions of issues, actions and other individuals. Further transformation takes place when the conflict is expressed differently. It might be expressed violently or competitively as Deutsch (1973) notes, or it can be expressed through non-violent languaging (Rosenberg, (1999) and advocacy. Such transformation, according to Lederach, must take place both at the personal and systemic levels. At the personal level, transformation involves the pursuit of awareness, growth, and commitment to change, which may occur through the recognition of fear, anger, grief or bitterness. These emotions must be outwardly acknowledged and dealt with in order for effective conflict transformation to occur. Acknowledgment is a key variable in this study as one of the most important criteria for apology. Further, if one is to make peace, then the process of increasing justice and equality in the social system is necessary. In other words, personal transformation renders possible the transformation of social systems and systemic changes and vice versa. The keys to both of these transformations, according to Lederach (1995, 1997) are the elements of truth, justice and mercy, as well as empowerment and an interdependence with one another based upon a mutual effort to understand one another. When these come together, reconciliation occurs.

Peace, Justice and Conflict

Peace and justice are often seen as being in opposition to each other, as was alluded to in Category III in this literature review. As one can tell from the literature to this point, all of these elements--peace, justice, mercy, reconciliation and conflict resolution are interrelated and often overlap one another. Justice, according to Lederach (1995) involves

“the pursuit of restoration, of rectifying wrongs, or creating right relationships based upon equity and fairness. Pursuing justice involves advocacy for those harmed, for open acknowledgement of the wrongs committed, and for making things right. Mercy, on the other hand, involves compassion, forgiveness, and a new start. Mercy is oriented toward supporting persons who have committed injustices, encouraging them to change and move on” (Lederach, 1995, p. 20).

It is often assumed that justice requires determining the truth and punishing the guilty person. Mercy implies forgiveness. Punishment, according to Lederach, rarely results in any reconciliation or restitution (amends). So then, justice, especially its retributive form, might well be an illusion. The challenge, however, is “to pursue justice in ways that respect people, and [at the same time] to achieve restoration of relationships based on recognizing and amending injustices” (Lederach, 1995, p.20). Thus, Lederach argues, reconciliation involves the identification *and* acknowledgement of what happened (i.e. truth), an effort to right the wrongs that occurred (i.e. justice) and forgiveness for the perpetrators (mercy). The end of result is not only reconciliation, but peace. So how then, can an apology contribute?

Apology

Although there was no apparent empirical construct to address apology in general, or specifically, to measure its effects on mediation outcomes, there was a significant amount of qualitative information available to create an adequate framework from which to discuss apology and its components and the role an apology can play in the mediation process. Contrary to what might have been expected, considering the conciliatory, peace-building nature of an apology, and the adversarial, retributive nature of the legal system, the legal field contributed the most literature pertaining to apologies and their meaning, within the context of the mediation process, as was previously discussed in Category II, Justice and the Legal Arena. In fact, Goffman (1971) wrote that although the legal literature has treated “accounts” (p. 113) or excuses, at considerable length yet apologies have, for the most part, been omitted. He notes, however, that they are central to remedial work. He explains an apology as a “gesture through which an individual splits himself into two parts, the part that is guilty of an offense and the part that dissociates itself from the delict and affirms a belief in the offended rule” (p 113). This self-splitting, is the primary way we use an apology to save face. This accomplishes two things, according to Goffman: a) face is saved and therefore it shows that the offender is rehabilitated and worthy of being brought back into the group with which he or she identifies, and b) to reduce or eliminate the need for further punishment on the grounds that it “cannot change the actor any more than the actor has supposedly already been changed” (p. 113).

In Goffman’s view, the apology has several elements: 1) expression of embarrassment and chagrin, 2) clarification that one knows what conduct had been

expected and understands the necessity of some kind of negative sanction, 3) verbal rejection and recognition from others that the behavior *was* wrong, 4) vilification of self, 5) acknowledgement that there is an alternative, right way to behave, and 6) a reassurance from the offender that he or she will pursue that right way. As suggested, apologies represent a splitting of the self into a part that is blameworthy and one which sympathizes with the blame giving. According to Goffman (1971), three principal forms of remedial work are 1) the account, 2) the apology and 3) the request, all of which can be seen as a form of distributive justice, or a sort of payment for any harm done. For the purpose of this review, it is only necessary to detail the apology. Unlike Goffman, Tavuchis (1991) goes beyond the individual to the relational aspect of apology. According to him, it is not a single act but a fragile or delicate sequence of events between people. It is remedial and lead to forgiveness and reconciliation. Tavuchis more fully addresses apology by going beyond Goffman's behavioral approach, to dealing with a person's feelings. He asserts that it is not enough for one to say "I'm sorry," but one must *feel* sorry. This is the same principle of affective response to be discussed below. And ultimately, according to Tavuchis (1991), apology is about the reparation of social bonds. It is an attempt to make things right where harm has been done. He asserts that it has the "power to rehabilitate the individual and restore social harmony" (p.9). Other researchers and theorists agree that when an apology is communicated, it can actually restore self-esteem to the injured party (Crosby, 1980; Lazare, 1995a, 1995b; McCullough, 2000; McCullough, Bellah, Kilpatarick & Johnson, 2001). These researchers also posit that to apologize, one exhibits courage, because the one who apologizes takes the risk of being rejected and having the

apology mean nothing. In this way, as Schneider (2000a, 2000b,) posits, the apologizer is vulnerable because of this risk.

Researchers differentiate between excuse-making, justification and apology (Bennett & Dewberry, 1994; Ohbuchi, Fukushima, & Fukuno, 1995; Ohbuchi, Kameda, & Agarie, 1989; Ohbuchi, Ken-ichi, & Sato, 1994). Excuse-making and justification separate the act from the person, while apology does not make this separation Lamb (1997). Apologies can seem like excuses when a person might exclaim, "I can't believe I did that!" The implication is that the behavior is unlike the person and focuses the attention on the act and not on the character of the person who did the wrong. In general, if perpetrators are to be held responsible for their actions, this is an important point. Goffman (1971) has argued that the act of apologizing splits the self into a good self, who recognizes wrongdoing, and the bad self, who did the wrong. Those researchers who see the self as less separated from the community and the role that person plays in it in a more integrated way, view apology as a form of mitigation for social conflicts (Ohbuchi & Takashi, 1994). In fact, in one of their studies, the Japanese preferred apologies to justifications whereas Americans preferred justifications for wrongs done. Goffman (1971) asserts that apologies can be false and merely a form of what he terms the remedial self-presentation. Research shows that making an apology will minimize the negative attributions made about one's character and restore one's social identity (Kermer & Stephens, 1983, as cited in Lamb, 1997). They can also be manipulative in order to reduce social sanctions (Darby & Schlenker, 1982; Ohbuchi, Kameda, & Agarie, 1989; Schlenker & Darby, 1981). Then, of course, there are sincere and insincere apologies, meaningful and perfunctory ones. The variables used in this study concern the

affective responses of the apology, such as sincerity and regret, and will be discussed accordingly.

Criteria for Apology

The literature was sparse in terms of what was available by which to measure an apology. Schneider (2000a) notes that originally, the Oxford English Dictionary defined an apology as a defense, a justification or an excuse. More recently, the meaning has changed to acknowledging and expressing regret for a fault, without defense.

Although apologies are common to most cultures, the style, languaging and various meanings of them differ (Lazare, 2000). According to him, the essence of an apology in its simplest form is to acknowledge responsibility for a wrong done or a grievance, followed by an expression of remorse or regret. Schneider (2000a, 2000b) notes that apology is repair work. Wagatusuma and Rosett (1986) state that “while there are some injuries that cannot be repaired just by saying you are sorry, there are others that can *only* be repaired by an apology” (p.487). Tavuchis (1991) asserts that it is the reparative nature of apology which makes it most powerful when something is not able to be fixed but is also not able to be ignored.

Lazare (2000) notes that there are two major categories of reasons people apologize: 1) in response to their feelings of shame, remorse, guilt, empathy or 2) in an attempt to avoid punishment or retribution. He notes that international apologies tend to be of the latter category and that personal grievance is most likely to cause the greatest distress. The more modern definition of apology as acknowledging a wrong done and

expressing regret without defense, according to Schneider, reflects what he considers core components of an apology: acknowledgement, affect and vulnerability. According to Schneider (2000a) an apology must acknowledge that an injury of some sort has been done which has damaged the bonds between the offender and the offended, and further, it must be an offense which qualifies as a genuine injury (Schneider phone conversation, September, 2003). He goes on to assert that the offending party must be accountable for the injury or wrong-doing (Schneider, 1995, 2000a, 2000b). According to Schneider, in order to truly accept responsibility, the offending party must also be visibly affected personally by what has been done. Affect is a criterion for apology variable within this study. Lamb (1997) notes that for an apology to be considered sincere, it must show some affective response, such as remorse and empathy for the one hurt. She adds that one significant sign of a sincere apology is when the person making it has difficulty in doing so, and that this particular aspect is a neglected area in the apology/forgiveness research. The discomfort, she notes, comes from the fact that the person has now claimed this wrong-doing as his or her own and in doing this, must be rightfully ashamed for having done it. She makes an additional, important point by saying that the difficulty the perpetrator feels when making the apology is related to the fact that the perpetrator has regard for the other person's view of him or herself. In other words, the person apologizing needs to *look* like he or she feels the other person's pain over the injury done, and show genuine sorrow, or regret for having committed the wrong. By doing so, the offender shows that he or she *cares* what the other person thinks. When shame is indicated in the apology concerning the wrong done, it shows that the offended person's opinion matters to the offender. Essentially, then, a form of validation has taken place.

Comparatively, this is congruent with Schneider's (2000a, 2000b) concept of accountability.

Lazare (1995a, 1995b and 2000) adds two elements to the making of an apology, which are those of explanation and reparation. Usually, the offended person wants an explanation for the behavior which caused the offense. Sometimes, failure to provide that, according to Lazare, is often perceived as further insult or as adding insult to injury, as the saying goes. In an effective explanation, the offender needs to attempt to show that the offense was not intentional, not personal and is not likely to occur again. In terms of affective response, expressing shame or remorse sends the message that the offender is deeply regretful. If the victim does not perceive the party who is apologizing as sincerely remorseful, then the apology may not have much meaning. Reparations refer to repairing or making amends for a grievance or a wrong done (Lazare, 2000). Amends can restore some tangible loss or serve as a reparative symbol. Further, the reparation restores dignity to the party who was harmed.

Van Ness and Strong (2003), proponents of restorative justice, assert that this form of justice seeks to repair harms or make amends for what has been done, and that whenever possible, this should be done by the person(s) responsible for the crime. According to them, four elements of amends exist: 1) apology, 2) changed behavior, 3) restitution and 4) generosity. Apology can be verbal or non-verbal (Lazare, 2000; Van Ness & Strong, 2003). It can be written or spoken. Like Schneider (2000a, 2000b), they view apology as having three essential components: 1) acknowledgement, 2) affect and 3) vulnerability. Acknowledgement shows that the offender has not only accepted responsibility for harm done to the victim, but understands that *real* harm was caused by

the wrong-doing. Acknowledgment goes on to show that the offender recognizes that the victim is another human being, who did not deserve to be hurt. Affect goes beyond mere acknowledgment of guilt to actual shame or remorse for what has been done (Van Ness & Strong, 2003). Witnessing offenders expressing regret can be healing, according to them. Regret, too, can be expressed verbally or non-verbally, especially since feelings of deep regret are sometimes unable to be verbalized. Vulnerability bears directly upon power balance between offender and the offended. When a crime is committed, the offender has exerted power over the victim. When the offender apologizes, the power is given back (Van Ness & Strong, 2003).

The second component in the Van Ness and Strong (2003) model is changed behavior. At the most basic level, it means the offender stops offending. To accomplish this, the negotiated agreements between victims and their offenders structures in a change of environment. The third component of amends, according to them, is generosity, which means that in keeping with the restorative justice model, the offender goes beyond just minimal attempts to restore balance to the situation, through the punishment meted out. The offender may offer to perform services unrelated to the crime or the victim, which are understood by the victim to be evidence of a sincere apology. Finally, restitution means that the victims who have suffered the most direct harm should be paid back first. This also includes surviving family members. If community service is the court's punishment in order to repay society, it is important that the offender do service which bears directly upon the needs of the victims or their surviving family members. In all, these four components comprise what Van Ness and Strong (2003) would term amends.

In the literature relating to elements of apology, what is distinct is that all of the researchers agree, essentially, that acknowledgement of the offense, taking responsibility for it, expressing sincere regret and making amends are essential components of an apology. The terminology may have varied, but the meanings are the same. For the purposes of this study, the criteria used to measure an apology were 1) acknowledgement, 2) recognition, 3) affective response, 4) responsibility and 5) amends.

Perception

Phenomenology is a type of qualitative study, which attempts to discover what is at the core of a person's experience by examining their unique responses to the situation (Moustakas, 1994). According to him, "In phenomenology, perception is regarded as the primary source of knowledge, the source that cannot be doubted" (1994, p.2). If this is accepted to be true, then it follows that personal reality or perception is formed by the way that our thoughts integrate our experiences and other information. Welwood (1990) examined how the intimate relationships people have with one another affect the way they understand themselves, and notes that the most formidable obstacle in any relationship is often simply how a person *thinks* the relationship should be. Mayer (2000) said as much when he asserted that a person is in conflict if he or she *thinks* they are. Many times, according to Welwood, what an individual believes about a situation or how he or she interprets it, puts what is happening into a familiar framework and because of that, often narrows the options. It does so because an individual *believes* a thing to be so, not recognizing that it is merely part of the familiar framework. The less conscious an

individual is about how these frameworks control us, the more old behaviors are encouraged to remain (1990, pp. 25-26). It is important to note that in this study, only the *perception* that an apology did or did not occur, was addressed. If a participant believed it happened or did not happen, then the response was recorded accordingly. Details of this study, in terms of methodology and statistical analyses are to follow in Chapter III.

CHAPTER III

Methodology

The purpose of this study was to examine whether or not an apology has an impact on mediation outcomes. For the purpose of this study, apology is defined solely by the research participant as any perception by that participant that an apology, actual or implied, occurred during the mediation process. It is essential to note for clarification, that for the purpose of this study, *effectiveness of the apology was not a measure*. Only the *perception that an apology occurred* during the mediation process was measured as that construct.

The analyses were performed following the collection of data using the Mediating Party Questionnaire. The Questionnaire was designed to be completed as a telephone survey instrument, wherein participants were asked to respond to a question on the Questionnaire about whether or not they perceived that an apology had occurred during mediation process. All participants had copies of the Questionnaire when they were asked to respond to it. Based upon whether or not an apology had occurred, they were then asked questions on the Questionnaire survey, which were constructed to address the affective mediation outcomes used in this study which were a) improved self-esteem, b) emotional closure to the issue which brought them to mediation, c) the sense of justice in the mediation outcome, d) their sense of fairness concerning the mediation outcome, e)

their feelings of empowerment and f) overall satisfaction with the mediation process. Additionally, depending upon their response as to whether an apology had occurred during the mediation process, they were then asked questions pertaining to the literature-based criteria for apology which were used in this study which were a) the extent to which they perceived that an offense had been committed or a wrong had been done, b) the extent to which they recognized what the specific offense was which had been committed, c) the extent to which they believed that responsibility was taken for the offense which had been committed, d) the extent to which the apology was sincere, as evidenced by some affective response and e) the extent to which amends were willing to be made. For clarification purposes, the terms offense committed and wrong done are used synonymously throughout the study, and are based upon existing literature.

Presented in this chapter are the research hypotheses, the description of research subjects, preliminary procedures, data collection procedure, operational procedures and statistical methods of analysis by which the hypotheses are to be examined. Additionally, a detailed description of the Questionnaire survey instrument of measure, briefly described in Chapter 1, is included in this chapter. All analyses were performed on a total $n = 81$ at $\alpha \leq .05$.

Research Hypotheses

The following hypotheses were generated:

Hypothesis 1: The perception that an apology occurred during the mediation process does not predict the likelihood of further litigation.

Hypothesis 2: There is no relationship between the perception that an apology occurred and overall satisfaction with the mediation process.

Hypothesis 3: The perception that an apology occurred does not affect the sense of justice in the mediation outcome.

Hypothesis 4: The perception that an apology occurred does not affect the sense of fairness of the mediation outcome.

Hypothesis 5: The perception that an apology occurred does not influence the relationship between mediating parties.

Hypothesis 6: There will be no relationship between importance of improved relationship between mediating parties and the perception that an apology occurred.

Hypothesis 7: The criteria for apology are not differentially related to affective mediation outcomes.

Participants

There was an exhaustive selection of participants for this study. Lists of all of those parties who had participated in mediation within six months prior to the beginning of data collection were made available to the researcher by the Early Settlement North regional office, located in Stillwater, Oklahoma, and from the Early Settlement Northwest regional office, located in Enid, Oklahoma. The counties which are contained within and served by the North region are Pawnee, Osage, Kay, Noble, Creek, Lincoln, Logan and Payne. Counties contained within and served by the Northwest region are

Major, Alfalfa, Grant, Garfield, Woods, Woodward, Dewey, Kingfisher, Blaine, Ellis and Custer counties. All Early Settlement regions and their corresponding counties were approved for data collection by the Dispute Resolution Advisory Board (DRAB) in the event that the North Region not be able to yield sufficient n of ≥ 75 subjects. The n of 75 subjects was chosen for several reasons. First, $n=75$ is considered to be robust for the t and F distributions, used in the testing of the hypotheses in this study (Bain & Englehart, 1992.) The canonical correlation analysis used to test Hypothesis 7 would have benefited from a larger n , and is addressed as a study limitation in Chapter V. Second, there is often an inherent difficulty in being able to contact mediation participants, following their mediations particularly in Small Claims cases. This is the case particularly because the regions from which the sample was drawn are associated with universities and have a transient student population. Third, the regions used in this study are comprised of many smaller communities, which sometimes make telephone contact difficult due to inclement weather, which affects telephone lines. Fourth, there sometimes exists a socio-cultural aspect concerning telephone usage, in that people in rural and smaller communities often take a more relaxed approach to answering the telephone, retrieving messages and returning phone calls, than do people in more metropolitan areas. This might have affected time-sensitive data collection. Finally, although most participants in mediations do have telephones, they often choose not to list a contact number with the Early Settlement offices, and the mediator may omit asking for the number and placing it on the Agreement to Mediate form, a standard form used by Early Settlement programs. All of these factors can make contacting participants difficult, if not impossible. The n of 75 was expected to be sufficient to account for the above limitations.

The North and Northwest region populations were used for data collection and yielded $n=84$. Collection of data was approved by the Supreme Court of Oklahoma's Administrative Office of the Courts, following review and approval of the research proposal by the Alternative Dispute Resolution Advisory Board of Oklahoma (DRAB).

All participants were males or females over 18 years of age, a mandatory criterion for participation in mediation, per Early Settlement guidelines. Participants ranged in age from 18 to 65, and older. Ethnicity was not a criterion used or reported, since no participant was asked their ethnicity. The participants were taken from cases, which had been referred to mediation by the court, an attorney, self-referral or other outside source, to the Early Settlement North and Northwest regional offices. The participants were taken from all available parties who had participated in mediation within six months prior to the beginning of data collection. This timeline was chosen for a number of reasons. First, many cases are logged into the Early Settlement database, but are often not able to be mediated because of several possible reasons, which include a) inability to reach and/or coordinate the schedules of all parties to the mediation, including outside parties such as attorneys, and other relevant parties who might be assisting the mediating party, and b) availability of a state-certified mediator appropriate for the mediation. For instance, mediations other than those considered Basic mediations, such as IDEA (Individuals with Disabilities in Education) and Family and Divorce mediation, can only be conducted by mediators with certifications specific to those types of mediations. Therefore, to maximize the available population from which to collect data, this timeline was selected. The second reason this timeline was selected was to minimize the possibility of parties moving away and not being available to survey. This might happen especially since many

of the mediations are landlord/tenant, Small Claims mediations, often involving a student population. The third reason this timeline was selected was to decrease the possibility of litigants forgetting details of the mediation, which would allow them to answer the questions on the Questionnaire survey more accurately. A fourth reason for the selection of this timeline is related to the third, in that it might allow participants time to reflect upon what had happened in the mediation, thereby enabling them to answer the Questionnaire survey more accurately.

One limitation concerning data collection existed, in that no data were collected from mediations in which the researcher served as the mediator or co-mediator. Data were collected from all of the cases meeting the above criteria, whether or not an agreement was reached in each respective case. Whether or not an agreement was reached in mediation did not affect the selection of the participants. Data were collected from all parties who verbally consented to participate in the research study and were not necessarily collected from both parties to a given mediation. In some cases, data were collected from both parties in a given mediation, but were not analyzed as such, in paired groupings, such as Initiator/Respondent. Each research participant was exclusive and independent of the other, no matter their status (Initiator/Respondent) in the mediation.

Mediating Party Questionnaire Survey

The instrument used in this study was developed by the researcher, based upon existing literature surrounding apology and its meanings, combined with the experience of the researcher as a mediator, and was divided into logically coherent categories, or

subscales. The Mediating Party Questionnaire (See Appendix H) was designed to assess perceptions of the occurrence of an apology during the mediation process, and is divided into eight sections or subscales, labeled A-H.

Section A of the Mediating Party Questionnaire consists of questions which provide an opportunity for the researcher to establish a measure of rapport with the participant prior to conducting the telephone interview. This section consists of standard questions concerning the mediation in which the research participant had most recently participated, such as type of mediation, nature of the dispute, duration of dispute and whether or not the participant was the Initiator or Respondent in the mediation case. The Frequency Table 1 provides all pertinent descriptive and demographic data for the purposes of this study and provides information for the Dispute Resolution Advisory Board post-study presentation.

The questions in Subscale B (see Appendix H) concern whether an apology was perceived to have been *given*, according to the research participant, and is labeled accordingly. Subscale C (see Appendix H) pertains only to those research participants who perceived that they had *received* an apology, and is labeled accordingly. Subscale D (see Appendix H) addresses those research participants who perceived that an apology was both given *and* received during the mediation process and is labeled accordingly. Subscale E (see Appendix H) pertains to those research participants who perceived *no apology* to have occurred during the mediation process, and was also labeled accordingly. The questions were identical in construction in Subscales B-D, and subscale-specific. In other words, the subscales had corresponding questions suited to their respective categories (i.e. Gave an apology, Received an apology, Gave and Received an apology,

No Apology received.) Subscale E, pertaining to no apology given, was similar in construction to Subscales B-D, with the exception that the questions were worded in such a way as to call for speculation on the part of the participant. This is so because no apology was perceived to have occurred, therefore the participant had to speculate about whether or not giving or receiving an apology would have made a difference. Subscales F and G, have corresponding questions suited to their respective categories, “Gave” an apology and “Received” an apology. The difference between Subscales B-E and F-G is that the questions in Subscales F and G are specifically tailored to address the criteria for apology as set forth in the literature. Subscale H contains demographic and Early Settlement-specific descriptive data only, which can be found in the Frequency Table, and will be included in the post-study presentation to be made to the Dispute Resolution Advisory Board. Item 72 in Subscale H, concerning gender, will be used for descriptive purposes only and is not analyzed to address any hypothesis in this study, but is available for use in future research.

All responses were recorded according to the *perceptions* of each research participant. The questions are designed to assess three areas: 1) participants’ perceptions of whether or not an apology occurred during the mediation process, 2) how the occurrence of an apology affected six areas: a) the relationship between parties, b) emotional closure to the issue(s) which brought parties to mediation, c) importance of improved relationship with the other party, d) sense of justice in the mediation outcome, e) sense of fairness of the mediation outcome, and f) overall satisfaction with the mediation process, and 3) if the apology was sincere, as evidenced by the criteria of a) acknowledgment that an offense occurred, b) recognition of specifically *what* the offense

was, c) whether or not responsibility was taken for the offense, d) if an affective response was present during the apology and e) if amends were willing to be made for the offense committed.

The Dispute Resolution Advisory Board required the addition of questions which were not analyzed for this study, but which may have relevance for future research. These questions address issues such as getting emotional closure to the issue which brought a party to mediation (items 54 and 68), elevated self-esteem (items 12, 21, 30, 39, 52, 66), and feelings of empowerment (items 53, 67).

The questions in section F were designed, based upon the existing literature-supported criteria for apology, to assess the perceptions of those participants who gave an apology in the following areas: a) extent to which a wrong was done or an offense was committed, b) extent to which they recognized what the specific offense was, c) the extent to which they believed that responsibility had been taken for the offense committed, d) the extent to which they believed that the apology given was sincere, as evidenced by affective response, such as remorse, regret, etc. and e) the extent to which willingness to make amends was present, e) effect on self-esteem, f) whether emotional closure concerning the issue which brought the parties to mediation was able to be achieved, g) the extent to which the participant believed that justice was better served after the occurrence of an apology, h) effect on the sense of fairness of the mediation outcome and i) sense of personal empowerment and j) overall satisfaction with the mediation process. Subscale G questions are conceptually parallel to those in Subscale F, with wording appropriate to having *received* an apology, instead of having given one, and assess the same criteria described above.

Subscale H consists of questions to be used descriptively in a later report to the Dispute Resolution Advisory Board (DRAB). It is important to note that item 75 in this section, concerning the likelihood by participants to pursue further litigation, is measured in Hypothesis 1.

Subscales B-E were designed using a four-point Likert scale. The four-point scale was designed to force an answer so that participants would not succumb to the tendency to take a “middle-of-the-road” stance should the subject matter or question pose an emotional or psychological threat. Subscales F and G are designed using a five-point monopolar scale, and are designed to assess participants’ responses in terms of literature-supported criteria for apology.

Informed Consent

Application was made to the Institutional Review Board (IRB) of Oklahoma State University and was approved via IRB Application Approval number ED03136. Per Dispute Resolution Advisory Board (DRAB) specifications, no written Informed Consent was to be signed by any participant in this study, due to the concerns about confidentiality issues inherent in the mediation process. Each participant was instead, read the Verbal Consent to Participate (see Appendix G) when contacted to participate in the survey, and prior to being asked any questions on the survey. Each participant was mailed a survey packet, which also contained this Verbal Consent to Participate. Each Verbal Consent to Participate was coded with a general PIN number, chosen by the researcher. All Verbal Consents to Participate were coded with the same general PIN

number so that any participant could contact the IRB, the researcher or the Committee Chair, should they so desire, and remain totally anonymous in doing so. Each research participant had written instructions on the Verbal Consent to Participate form contained in the survey packet which they had been mailed, and verbally instructed by the researcher upon initial contact, to only use this PIN number to identify themselves, should they wish to contact the IRB, the Researcher or the Committee Chair. The appropriate names and contact numbers for the Researcher, IRB and Committee Chairs, were written on *all* documents contained within the survey packets.

Instrument Validity

Content validity of the Mediating Party Questionnaire was determined by Pilot Study I, which consisted of ten professionals, considered to be experts in the field of mediation, conflict resolution or conflict management education and research, as well as attorneys and judges familiar with the mediation process. Each of these persons was interviewed according to the anticipated survey procedure, and their responses were recorded on the Mediating Party Questionnaire, which was expected to be used in the study. Each was encouraged to give feedback concerning wording, constructs, clarity of the questions and how well the questions reflected the criteria for apology and the criteria for affective mediation outcomes, which were variables subsequently used in this study. The responses were then intuitively measured by the researcher against existing literature constructs concerning the above criteria, and the Mediating Party Questionnaire was refined accordingly.

The overall perception by these experts was that the Mediating Party Questionnaire met the expectations for addressing the issues concerning the mediation process, affective outcomes of mediation and criteria for effective apologies, which were topics with which the experts were both familiar and about which they were able to offer meaningful feedback. Additionally, all Pilot I expert participants noted that the study was meaningful, relevant, timely and of merit to both the Early Settlement Dispute Resolution Program in Oklahoma, as well as to the field of Alternative Dispute Resolution (ADR) as a whole.

Preliminary Procedures

Instrument Reliability

Pilot Studies. Two pilot studies were conducted to clarify and refine questions on the Mediating Party Questionnaire survey and to determine its reliability. Pilot Study I was administered to and completed by individuals (n=10) considered to be experts in the field of mediation, conflict resolution or conflict management education and research. Those who participated in Pilot I included professional mediators, mediation trainers, consultants, Early Settlement Directors, attorneys and judges familiar with mediation and the mediation process. These were considered experts in the field of mediation, negotiation research and law. All attorneys and judges interviewed in the Pilot I were familiar with ADR and the Early Settlement mediation program.

Pilot Study II was administered and completed with a heterogeneous population of 47 participants. The Pilot studies were conducted by telephone, using the procedure which was expected to be used in completing the Mediating Party Questionnaire survey, pending the approval of the Dispute Resolution Advisory Board of Oklahoma and the Institutional Review Board (IRB) of Oklahoma State University. All pilot participants were mailed or given a copy of the Mediating Party Questionnaire prior to the actual survey interview, and feedback was noted and used to refine the Questionnaire survey.

Each of the subscales, B-G, of the Questionnaire, were tested for internal consistency reliability. With multiple refinements of the Mediating Party Questionnaire survey, through the pilot testing process, subscales B-G revealed internal consistency reliability scores of p-values ranging from .682 to .927. All reliabilities of .60 and above are considered to be reliable (Shavelson, 1996).

Data Collection Preparation

Preliminary Procedures

A letter requesting permission to use the Early Settlement population was written to the Director of the Oklahoma Supreme Court Administrative Office of the Courts, Alternative Dispute Resolution System of Oklahoma on January 28, 2003. The Director consulted with the Oklahoma Administrator of the Courts, appointed by the Oklahoma Supreme Court, and it was agreed by them that provisional permission was granted, pursuant to consultation and deliberation by the Dispute Resolution Advisory Board

(DRAB) of the Supreme Court of Oklahoma. The researcher was notified on February 10, 2003, by phone by the Oklahoma ADR Director, that the research was welcomed, provided the Dispute Resolution Advisory Board voted in agreement. It was requested that the researcher be present at the February 21, 2003 DRAB meeting to make an official presentation and request. A presentation was made to the Board on that date by the researcher, explaining the study and proposing that the Early Settlement regions be made available for collection of data from existing mediations in the Early Settlement database, which had been completed. Prior to approval for the study to begin, a recommendation was made by the DRAB Chairman, that an ad hoc committee be formed to investigate and determine the legalities of the confidentiality issue(s) which might possibly result in third party breaches of confidentiality, due to the nature of the data being collected and the collection method. This committee consisted of attorneys, judges, legal consultants, the ADR Director for Oklahoma and the Director of the North Region. The researcher submitted tentative drafts of the proposed procedure for approval by the ad hoc committee and a final version was agreed upon. A second meeting with the ad hoc committee on March 16, 2003 occurred in Oklahoma City, wherein further discussion of this proposed procedure ensued. Permission and agreement by the Director of the North region was given for the researcher to access all available files and documents in that office, from which to gather the data.

The ad hoc committee voted to recommend that the study be done using Early Settlement populations, provided no written consents to participate were required or given. Further, it was also proposed that the researcher and any data collected, be included under the umbrella of Early Settlement endorsement under the protection of

State Statute 1805, regarding confidentiality of proceedings and mediator exemption from subpoena, (see Appendix K) while conducting the research. This caveat would exempt from subpoena both the researcher and any collected data in the event that third party breach should occur and yield unfavorable information available for discovery in a legal pursuit. Finally, the ad hoc committee designated that the name of each participant in the research study be listed on a separate sheet of paper, which was to be shredded by the researcher following contact and administration of the Mediating Party Questionnaire survey.

A third meeting was held with the ad hoc committee on April 18, 2003, to discuss the formal recommendation for the proposal to be accepted and the researcher to be endorsed by the Early Settlement Alternative Dispute Resolution Program of Oklahoma. The researcher came before the entire Dispute Resolution Advisory Board a second time, to present the ad hoc committee's approved Procedural Outline (see Appendix C), and again requested that the Oklahoma Early Settlement regions be made available for extraction of data from their existing files of completed mediations. The Dispute Resolution Advisory Board voted to accept the ad hoc committee recommendation on all points, and the Oklahoma ADR Director agreed to present this recommendation to the Administrator of the Courts for issuance of an official approval letter, pending completion and submission to him of the Mediating Party Questionnaire instrument of measure.

The Mediating Party Questionnaire survey instrument was presented to and approved of by the Oklahoma Administrator of the Courts, and an official authorization letter of endorsement was sent on May 22, 2003 authorizing the Early Settlement

Mediation Programs of Oklahoma's Alternative Dispute Resolution System to serve as sponsors of this research study, (see Appendix B) utilizing the researcher as a 'person employed to assist a mediator.' (see Appendix K). Under this sponsorship, the researcher is entitled to all of the protections afforded under State Statute 1805, previously mentioned (see Appendix K). The Director of the North Region was to make arrangements as soon as was possible to have the researcher begin conducting the Mediation User Survey Form (see Appendix D), a standard Early Settlement procedure, following the approval of the Institutional Review Board (IRB) of Oklahoma State University. One question was to be added to the Mediation User Survey Form (see Appendix D), which would ask all parties to all mediations meeting the criteria set forth above, if they would be willing to participate in a research study. Application for approval and permission to begin data collection was submitted to the IRB and was subsequently approved for Exempt Status on application number ED03136 (see Appendix I).

The Operational Procedure section of this chapter will explain in further detail the data collection process proposed by this researcher, amended and recommended by the Dispute Resolution Advisory Board ad hoc committee and approved by the Dispute Resolution Advisory Board.

Operational Procedure

Data Collection Procedure

Early Settlement offices routinely administer follow-up surveys, which are entitled, Mediation User Survey forms to determine party satisfaction with the mediation process. The researcher conducted the routine Mediation User Survey (see Appendix D), wherein each participant in a mediation within the six months prior to the onset of data collection, was contacted to inquire as to their satisfaction with the mediation and their mediator. The names of participants, referred to Early Settlement by the court or by another source, including self-referral, were made available from existing Early Settlement files. One additional question was added to the existing questions on the standard Mediation User Survey Form, asking parties if they would be willing to participate in a research study (see Appendix E). If there was no objection, Verbal Consent to Participate (see Appendix G), which covers rules of confidentiality, was read to them and verbal consent to participate in the study was obtained. Following the participant's verbal consent to participate, a convenient time to phone them to complete the Mediating Party Questionnaire was established, a correct mailing address obtained and a copy of the Questionnaire was put in the mail to them for follow-up at the agreed time. Each name and phone number of consenting participants was listed separately on one sheet of paper for ease of destruction following the Questionnaire Interview.

Third-Party Breach of Confidentiality

Because the study is sponsored by Early Settlement Mediation, an Oklahoma Alternative Dispute Resolution (ADR) program, all the legislated protections of confidentiality apply. To avoid problems with possible breaches of confidentiality, the researcher did not collect data on any case wherein she acted as mediator. At the time of the Mediation User Survey Form, a general PIN code was assigned to those who agreed to participate in the study. The general PIN code was shared by all participants of the study, identifying them as participants, so that they might contact either the researcher, the Chair of the doctoral committee or the Chair of the Institutional Review Board (IRB), in total confidentiality, with any questions or concerns they might have about the study or the confidentiality already afforded them as mediating parties under state statutes governing ADR. The general PIN code (G-PIN) was placed on all documents in the packet, which was mailed to the research participants, including the Verbal Consent to Participate, Explanation of Research Study and the Mediating Party Questionnaire. The contact telephone numbers were given to the participants and were included on the same documents, should they desire to inquire about the study prior to completion of the Mediating Party Questionnaire interview.

Following verbal consent to participate, the researcher explained that a copy of the Mediating Party Questionnaire, which was to be used in the study, would be mailed to them, and that the researcher would phone them at the agreed upon time or within a few days following receipt of it, in order to complete it over the telephone. It was noted to

them that the Mediating Party Questionnaire would take no more than fifteen or twenty minutes of their time, depending upon their responses.

The name of each participant and their respective telephone number was written on a separate sheet of paper. At the time of the initial contact to complete the standard Early Settlement Mediation User Survey Form and the question regarding interest in participating in further research (see Appendix E) was asked, and if an affirmative response indicating willingness to participate was received, then a Questionnaire-specific PIN code was assigned to the Mediating Party Questionnaire survey form and to the envelope containing the Mediating Party Questionnaire survey. Following the party's affirmative answer in regard to participation in the research study, the Verbal Consent to Participate and Explanation of Study forms were addressed with them verbally. The packet containing the Mediating Party Questionnaire survey, the Verbal Consent to Participate and the Explanation of the Study, all of which had been reviewed verbally with them when setting up the appointment to complete the survey, was then mailed. The name and phone number, which was initially used to contact the party, was then shredded, leaving no connection between the names of the participants in the study and the party who participated in the mediation. Although the Early Settlement center is to maintain the records of the Mediating Party Questionnaire surveys, *the survey can only be identified by the second Questionnaire-specific PIN code*, not the General PIN code used by all participants in regard to research inquiries. This procedure prevents any third party breach from happening, as set forth by the Alternative Dispute Resolution Advisory Board during the initial approval process, with the full protections of State Statute 1805 (see Appendix K), guiding Alternative Dispute Resolution. Therefore, no participant or

mediator is liable or subject to subpoena for any reason related to this study or to the subject mediation, and there has been no disclosure of information to a third party outside the Early Settlement process.

The participants were phoned to complete the Mediating Party Questionnaire interview. When telephone contact was made, a *Questionnaire-specific PIN code* was assigned to the Mediating Party Questionnaire *held by the researcher. The participant had no knowledge of and did not know what this PIN code was.* The Questionnaire-specific PIN codes were coded with the letters I for Initiator, and R for Respondent, and were then consecutively numerically coded. The researcher recorded participants' responses on a duplicate copy of the Mediating Party Questionnaire. The participant also had a copy, which was included in the packet, which was initially mailed to them prior to the survey interview. The responses of the participants were coded into the Statistical Application Software (SAS) program (Stevens, 1996). for analysis and checked for errors of encoding and missing data. Any encoded Questionnaire data found to be missing or not within the specified range for analysis, was rechecked with its original numbered survey document and either confirmed, corrected or discarded. Exploratory tests were run to examine data distribution, and to examine any irregularities, such as data input errors. Once data coding and entry, errors or missing data had been accounted for, the Mediating Party Questionnaire surveys were turned over to Early Settlement North regional office Director, per Dispute Resolution Advisory Board specifications. Only the assigned Questionnaire-specific PIN codes were used to designate data entered. No names were used in data entry.

Confidentiality

All responses are to remain confidential. No Mediating Party Questionnaire held by the research participant was coded in any way, other than with the General PIN Code for study inquiries, so no relationship can be established between the participant and his/her responses. The researcher's copy had only a PIN code, which was specific only to the Mediating Party Questionnaire and which was assigned for data entry purposes and to maintain confidentiality, as described above. Since Early Settlement sponsored this research study, as such, the research was conducted under the ADR umbrella. All data gathered are considered privileged and confidential information as provided for in Oklahoma State Statute, Title 12, Section 1805 (see Appendix K) and Rule 10 (see Appendix J), which outline the confidentiality of the mediation proceeding for both mediators and for outside parties attending such. Items A-C of Rule 10, "Rules and Procedures for the Dispute Resolution Act" are found in Appendix J. For a complete reference to the rules for dispute resolution see "Confidentiality of Proceedings," Title 12, Section 1805 (see Appendix J).

Research Design and Statistical Analysis

Regression Analysis

Prediction is an important goal in the behavioral sciences and determining the functional relationship between two variables is important. The foundation of this

functional relationship is based upon the collection of data from the same subjects on the variable with which the prediction is to be made, and on the variable to be predicted.

Regression analysis employs a correlational design, in which one predictor variable is used to establish a functional relationship between the predictor variable and the outcome variable (Pedhazur, 1997). In other words, one variable predicts the other. It is important to note that prediction does not imply causation. Linear regression has four assumptions and all were met within this study:

1. Independence: The scores for any particular subjects are independent of the scores of all of the other subjects.
2. Normality: In the research population the scores on the dependent variable are assumed to be normally distributed for each of the possible combinations of the levels of the X variables.
3. Homoscedasticity: In the research population the variances of the dependent variable for each of the possible combinations of the X variable levels are equal.
4. Linearity: In the research population the relationship between the dependent variable and the independent variables are held constant (Shavelson, 1996).

This method was used to analyze Hypothesis 1, which seeks to find out if the perception of the occurrence of an apology predicts the likelihood of further litigation, using the Mediating Party Questionnaire survey.

Pearson Product-Moment Correlation

In this study, the Pearson product-moment correlation was used to analyze Hypothesis 2, which seeks to find out if there is a relationship between the occurrence of an apology and satisfaction with the mediation process, using the Mediating Party Questionnaire survey. Correlation studies focus on the way in which scores on one measure are associated with scores on a second measure. The correlation coefficient is a descriptive statistic that represents both the magnitude of the relation between two variables and the direction of the relationship. The Pearson product-moment correlation coefficient provides the measure of the strength of the association between variables. The larger the absolute value of r_{xy} is, the stronger the relationship between the variables X and Y. The square of r_{xy} , or r^2_{xy} , is called the coefficient of determination, which shows the proportion of variability in Y that can be accounted for by knowing X, or the variability in X which might be accounted for by knowing Y (Shavelson, 1996).

t-Test

The independent t-test was employed in this study to analyze Hypothesis 3, which seeks to find out whether the perception of the occurrence of an apology affects the sense of justice in the mediation outcome, using the Mediating Party Questionnaire. This method and the Mediating Party Questionnaire were also used to address Hypothesis 4, which seeks to find out whether the perception of the occurrence of an apology affects the sense of fairness of the mediation outcome.

Assumptions

When using the sampling distribution of t to test hypotheses about their means, the following assumptions are made:

1. The scores are randomly sampled from the population.
2. The scores in the population are normally distributed (Shavelson, 1996).

The first assumption was not met in this study, in that an exhaustive, not random sampling was done, and the t is robust.

Analysis of Variance

In this study, analysis of variance (ANOVA) was used to analyze whether or not the occurrence of an apology affected the relationship between mediating parties, which is reflected in Hypothesis 5. The Mediating Party Questionnaire was the instrument of measure. The one-way Analysis of variance (ANOVA) is the statistical procedure used to compare the means of two or more groups in order to determine whether the observed differences between them represent a chance occurrence or are from a systematic effect (Shavelson, 1996.) An ANOVA was also used to analyze Hypothesis 6, addressing whether the occurrence of an apology affected the importance of improved relationship between mediating parties, and the Mediating Party Questionnaire was the survey instrument used to measure this hypothesis, as well.

The one-way ANOVA assumes the following:

1. Independence: The score for any one subject is independent of the scores of all of the other subjects.
2. Normality: The scores within each treatment population are normally distributed.
3. Homogeneity of Variances: The variances of the scores in each treatment population are equal (Keppel, 1991).

Canonical Correlation

A canonical correlation is a means of breaking down the association of two sets of variables and is appropriate if the goal is to describe the parsimonious number and nature of mutually independent relationships which may exist between the two sets (Stevens, 1996). In this case, Hypothesis 7 was analyzed using this method to see which components of criteria for apology contributed most to the components listed in the set of affective mediation outcomes, and was measured using the Mediating Party Questionnaire. It should be noted that a Canonical Correlation is a means of breaking down the association for two sets of variables and is appropriate if description of the number and nature of mutually independent relationships exist. This procedure will not predict linear combinations, as in Canonical Regression, but relationships between sets of variables, such as criteria for apology and satisfaction with the mediation process, as in this case. When both sets of variables are assumed to overlap, it is the most efficient way

to sort out the contributions of individual items or factors in each set in relation to items in the other set (Stevens, 1996).

Following statistical analysis of all hypotheses, the results were determined and are reported in Chapter IV.

Statistical Analysis

Demographic variables and descriptive data were completed and recorded in the Frequency Table 1. for this study and for later presentation to the Supreme Court of Oklahoma, Dispute Resolution Advisory Board (DRAB). The demographic variables include age, gender, status (Initiator or Respondent), educational level, nature of the dispute, relationship of the mediating parties to one another, how long the conflict had been going on prior to mediation, whether or not the participant planned to pursue further litigation following the mediation, whether or not an attorney was consulted about and/or was present during the mediation session and whether or not the participant would be amenable to using mediation again in the future. Due to the number of variables available, beyond those of demographic nature, and to clarify terms in this study, a Variables Index, was compiled for convenient reference.

A Regression analysis was performed on Hypothesis 1, concerning the perception of the occurrence of an apology as it relates to the likelihood of further litigation. Question 7 on the Mediating Party Questionnaire survey pertains to the perception of the occurrence of apology, while the likelihood of further litigation is reflected in item 75 on the Mediating Party Questionnaire (Item 7 on the Variables Index).

Hypothesis 2 was addressed using a Pearson product-moment correlation analysis to determine if the perception that an apology occurred affected a mediating party's overall satisfaction with the mediation process. Item 7 on the Questionnaire survey (Item 2 on the Variables Index, reflects the perception of the occurrence of an apology, while overall satisfaction with the mediation process is measured by items 16, 25, 34, 43, 57, and 71 (Item 8 on the Variables Index).

To determine whether the perception of the occurrence of an apology had any effect on a participant's sense of justice concerning the mediation outcome, (Hypothesis 3) a *t*-test, was performed. The construct of justice is reflected in items 14, 23, 32, 42, 55 and 69 on the Questionnaire survey (Item 10 on the Variables Index,).

To address a party's sense of fairness upon the perception of the occurrence of an apology (Hypothesis 4) a *t*-test was performed. The construct of fairness is measured by items 15, 24, 33, 41, 56 and 70 on the Questionnaire survey (Item 9 on the Variables Index, and the perception of the occurrence of an apology is measured by item 7 on the Questionnaire survey (Item 2 on the Variables Index).

In order to assess whether or not the perception of the occurrence of an apology had any influence on the relationship which mediating parties had with one another (Hypothesis 5), an Analysis of Variance (ANOVA) with linear comparisons was used. The perception of the occurrence of an apology is measured by item 7 on the Questionnaire survey (Item 2 on the Variables Index). Effect upon the relationship between mediating parties is measured by Questionnaire survey items 9, 18, 27 and 36 (Item 8b on the Variables Index).

Although related in principle to Hypothesis 5, the construct contained in Hypothesis 6 is exclusive. To determine whether a relationship between the perception of the occurrence of an apology and the importance a mediating party might place on the improvement of the relationship between them, an Analysis of Variance (ANOVA) with multiple comparisons was done. Item 7 on the Questionnaire survey (Item 2 on the Variables Index) addresses the perception of the occurrence of an apology, and items 13, 22, 31 and 40 (Item 6 on the Variables Index) indicate importance of improved relationship.

Finally, in order to measure the way in which each of the criteria for apology, as it relates to each of the possible affective outcomes of mediation used for the purposes of this study (Hypothesis 7), a Canonical Correlation was used. Criteria for apology, are addressed on the Mediating Party Questionnaire as follows: Acknowledgment by items by items 44 and 58, recognition by items 45 and 59, responsibility by items 46 and 60, affective response by items 47 and 61 and amends by items 48 and 62 on the Questionnaire survey (Item 5a-c on the Variables Index). Affective outcomes, are addressed by items Improved self-esteem is measured by Questionnaire survey items 12, 21, 30, 39, 52 and 66, emotional closure by items 54, 68, sense of justice by items 14, 23,32,42,55, 69, sense of fairness by items 15, 24, 33, 41, 56, 70, sense of empowerment by items 53, 67 and satisfaction with the mediation process by items 16, 25, 34,43, 57, 71 (Item 1a-e on the Variables Index). Using a canonical correlation procedure is an attempt to determine the contribution each criterion of the set of apology made to each criterion used in the set of possible affective outcomes. The independent variables, criteria for apology, (Item 5 on the Variables Index) included the following: a) *acknowledgment* that

an offense was committed, b) *recognition* of what the specific offense was, c) willingness to take *responsibility* for the offense committed, d) evidence of *affective response*, concerning the offense committed, and e) willingness to make *amends* or reparations for the wrong done or offense committed. Criteria used to measure affective outcomes of mediation, the dependent variables in this study, are a) *improved self-esteem*, b) *sense of empowerment*, c) *sense of justice* in the mediation outcome, d) *sense of fairness* of the mediation outcome, e) getting *emotional closure* to the issue which brought the parties to mediation and f) *overall satisfaction with the mediation process*. The Variables Index, Table 1 reflects the Mediating Party Questionnaire items, which correspond with these variables.

Table 1

Variables Index

Variable	Item
1. Affective outcomes	
a) Improved self-esteem	12, 21, 30, 39, 52, 66
b) Emotional closure	54, 68
c) Sense of justice	14, 23, 32, 42, 55, 69
d) Empowerment	53, 67
e) Satisfaction with the process	16, 25, 34, 43, 57, 71
f) Sense of fairness	15, 24, 33, 41, 56, 70
2. Apology occurring/not occurring	7
3. Apology given	8
4. Apology received	17

Table 1 (continued)

Variable	Item
5. Criteria for Apology	
a) Acknowledgment (that offense was done)	44, 58
b) Recognition (of specific offense)	45, 51, 59, 65
c) Responsibility (willingness take)	46, 60
d) Affective response (showing sincerity, regret)	47, 51, 61, 65
e) Amends (willingness to make)	48, 62
6. Importance of improved relationship	13, 22, 31, 40
7. Likelihood of further litigation	75
8. Overall satisfaction with mediation process	16, 25, 34, 43, 57, 71
<i>To include:</i>	
a) Length of mediation	11, 20, 29, 38
b) Effect on party relationship	9, 18, 27, 36
c) Improved self-esteem	12, 21, 30, 39, 52, 66
d) Belief that mediation outcome was affected	10, 19, 25, 28, 37
e) Sense of empowerment	53, 67
f) Emotional closure	54, 68
g) Sense of justice	14, 23, 32, 42, 55, 69
h) Sense of fairness	15, 24, 33, 41, 56, 70
9. Sense of fairness	15, 24, 33, 41, 56, 70
10. Sense of justice	14, 23, 32, 42, 55, 69

CHAPTER IV

Results

The purpose of this chapter is to report the findings of the data analyses on the eighty-one participants in this study, who were parties to Small Claims mediations, Family and Divorce mediations or mediations labeled “Other.”

This researcher received permission from all participants prior to administering the Questionnaire survey instrument, using the “Verbal Consent to Participate” form (see Appendix G). The number of participants in this study is broken down and frequencies of participants’ responses on the Mediating Party Questionnaire are reflected in Table 2.

Results of evaluation of assumptions mentioned in Chapter III, indicate a normal distribution of the data. Data from three research participants were eliminated due to either missing data or data entry error, for a total n of 81. All analyses were performed at the $\alpha \leq .05$ level. Details of these analyses will be discussed and reflected in the corresponding tables.

The response frequency breakdown of participants’ responses on the Mediating Party Questionnaire in Table 2 first illustrates the data collected for the subscales: Subscale B, Gave an Apology, Subscale C, Received an Apology, Subscale D, Gave and Received an Apology and Subscale E, No Apology. The data were presented in the order the demographic questions were listed on the Questionnaire survey with the exception of

gender, which is broken down first into the gender of the research participant and then the gender of the other party to the mediation, so that these results can be easily compared for future research, if necessary. The categories are listed in the following order in terms of the research participant: 1) Status, in terms of whether he/she was the Initiator or Respondent, 2) gender of the participant answering the Questionnaire instrument and who was party to the mediation, 3) gender of the other party to the mediation, 4) type of mediation in which they participated (Small claims, Family/Divorce or Other), 5) nature of the dispute which brought the parties to mediation, 6) relationship of the parties to one another, 7) how long the conflict which brought the parties to mediation had been going on, 8) number of those who perceived that an apology had occurred or not occurred, 9) age of the research participant, 10) level of education, 11) the likelihood that the research participant who was a party to the mediation will pursue further litigation, 12) whether or not the participant consulted an attorney, 13) whether or not an attorney was present during the mediation and 14) whether or not the participant would use mediation again in the future.

Reliability Analysis

Reliability analyses were also run on Subscales F and G, which pertained to having given or received an apology, with questions designed to reflect and specifically relate to literature-based criteria for apology. The following are the internal consistency reliability results for the subscales: Subscale B: alpha = .868, Subscale C: alpha = .811, Subscale D: alpha=.642, Subscale E: alpha= .746, Subscale F: alpha = .927, and Subscale

G: $\alpha = .682$. Reliability coefficients= nine items in each of subscales B-E, and 17 in subscales F and G.

Table 2

Frequency Table		
Descriptive Data	Frequency	Percent
Gave Apology (Subscale B)	15	18.52
Received Apology (Subscale C)	30	37.04
Gave and Received Apology (Subscale D)	2	2.47
No Apology (Subscale E)	34	41.98
Status		
Initiator	50	61.73
Respondent	31	38.27
Gender of Participant		
Male	38	46.91
Female	43	53.09
Gender of Other Party		
Male	35	43.21
Female	46	56.79
Type of Litigation		
Small Claims	39	48.15
Family/Divorce	21	25.93
Other	21	25.93

Table 2 (continued)

	Frequency	Percent
Nature of Dispute		
Money	24	29.63
Property	15	18.52
Personal Relationship	14	17.28
Dissatisfaction with Product or Services	11	13.58
Animal Disturbance	2	2.47
Other	15	18.52
Relationship of Parties		
Landlord/Tenant	7	8.64
Former Mates	13	16.05
Acquaintances	1	1.23
Strangers	2	2.47
Consumer/Business	19	23.46
Mates	11	13.58
Friends	5	6.17
Co-workers	1	1.23
Borrower/Creditor	1	1.23
Neighbors	7	8.64
Family	5	6.17
Other	9	11.11

Table 2 (continued)

Descriptive Data	Frequency	Percent
Length of conflict prior to mediation		
Days	4	4.94
Weeks	3	3.70
Months	35	43.21
Years	38	46.91
Missing	1	1.23
Apology occurred		
Strongly Agree	13	16.05
Agree	36	44.44
Disagree	15	18.52
Strongly Disagree	17	20.99
Age		
18-25	3	3.70
26-33	8	9.88
34-41	16	19.75
42-49	31	38.27
50-57	19	23.46
58-65	2	2.47
65+	2	2.47

Table 2 (continued)

Descriptive Data	Frequency	Percent
Level of education		
Some High School	3	3.70
High School	12	14.91
Technical	11	13.58
Some College	20	24.69
College Graduate	20	24.69
Graduate Degree	14	17.28
Other	1	1.23
Further litigation (Very Likely/Somewhat Likely)	24	29.62
No Further Litigation (Not likely/Will Not Pursue)	57	70.37
Attorney Consulted	37	45.68
Attorney Not Consulted	44	54.32
Attorney Present	11	13.58
Attorney Not Present	70	86.42
Will Use Mediation Again	70	86.42
Will Not Use Mediation Again	11	13.58

Statistical Analysis

Examination of the first research hypothesis was conducted using Regression analysis. The following is the null hypothesis:

Ho 1: The perception of the occurrence of an apology does not predict the likelihood of further litigation.

Regression Analysis

Performing a regression estimate of apology versus litigation yielded a significant correlation between the two variables, perception of the occurrence of an apology and likelihood of further litigation, with the slope of the regression line being negative. A p value of $\leq .003$ was found. The negative slope of the regression line indicates that the likelihood of further litigation increases as the perception that an apology occurred decreases (see Figure 1). Table 2 reflects *t* values which were obtained and used to ensure significance of the results. Based upon the results of the regression analysis, the null hypothesis can be rejected and assumed to be false, meaning that as the perception that apology occurred increases, the likelihood that further litigation will be pursued decreases. Analyses were also performed to evaluate the assumptions and to determine normal distribution, and they were found to be in compliance. Detailed values of this analysis can be found in Table 3.

Table 3

Regression Analysis of Apology and Satisfaction with Mediation Process

Model Summary^b

Model	R	R ²	Adjusted R ²	Std. Error of the Estimate	Durbin-Watson
1	.323 ^a	.105	.093	.952	1.691

Table 4

Coefficients for Regression Analysis of Apology and Satisfaction with Mediation Process
Coefficients^a

Model	Unstandardized Coefficients		Standardized Coefficients		
	B	Std. Error	Beta	t	Significance
1 (Constant)	3.683	.282		13.060	.000
Apology	-.323	.106	-.323	-3.038	.003

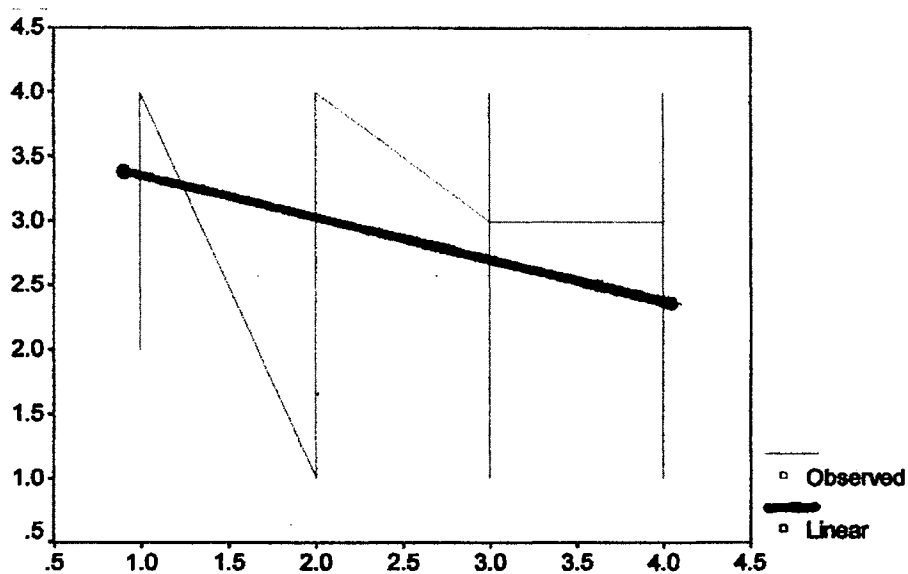


Figure 2. Regression slope: Analysis of apology and satisfaction with mediation process.

Hypothesis 2 was addressed using a Pearson product-moment correlation. The null hypothesis states:

Ho 2: There is no relationship between the perception of the occurrence of an apology and satisfaction with the mediation process.

Pearson Product-Moment Correlation

Calculating a Pearson product-moment correlation between perceived occurrence of an apology and satisfaction with the mediation process, Hypothesis 2 was analyzed. Initially, when all types of litigation (Small Claims, Family and Divorce and Other) were analyzed together as a whole, the result yielded a statistically non-significant p-value of .477 and an R value of .0188. No difference could be found when all pieces of data were grouped together and analyzed. Therefore, we must fail to reject the null hypothesis. However, further analysis was conducted to try to determine why the null was unable to be rejected. Consequently, the data were blocked by litigation type, which included data sets in the Small Claims, Family and Divorce and Other cases. Once blocked, pairwise *t* tests were conducted to discern the differences. These results are shown in Table 5. Statistical significance for all of the variables, Small Claims, Family and Divorce and Other, resulted. The p-values of those respective groups are as follows: Small Claims cases $p \leq .004$, Family and Divorce cases resulted in a p-value of $\leq .0001$ and a p-value of $\leq .002$ for the variable, Other, was found. These results indicate that when the data were blocked by litigation, a significant relationship resulted between perceived occurrence of apology and overall satisfaction with the mediation process. Analyses of all three types of litigation reflected a sense of overall satisfaction experienced by participants in each data set when an apology was perceived to have occurred. In this case, the null can be rejected and assumed to be false, but only when distinguished by litigation type.

Table 5

Pairwise *t*-test Values for Apology and Satisfaction with Mediation Process

	Satisfaction			
	Mean	Std. Dev.	Std. Error	<i>t</i> value
Small Claims	1.948	0.887	0.142	- 3.88
Family/Divorce	1.571	0.810	0.176	- 5.25
Other	1.952	0.740	0.161	- 3.39

Hypothesis 3 was addressed using an independent *t*-test. The null is stated thus:

Ho 3: The occurrence of an apology does not affect the sense of justice in the mediation outcome.

t-Test

Since this was a directional hypothesis and the variable of justice is coded on the Questionnaire instrument as a range of values from 1-4, wherein a response of 1 represents total agreement (“Strongly agree”) and a response of 4 represents total disagreement (“Strongly disagree”), a mean value was established with the four possible responses between the extremes. This mean value was determined to be < 2.5, representing a hypothetical response of “No opinion.” Statistically, it could be said that this mean is the hypothesized null. In other words, this “No opinion” response (or < 2.5 mean) in essence, represents the null hypothesis, if statistical values had been projected in null form. Performing a *t*-test yielded a test statistic of - 2.80, with a p-value of 0.006. Since the test statistic is negative, it appeared that the answers were grouping in the range of values less than < 2.5. Scores were more variable and extreme in the Family and

Divorce cases than the Small Claims cases, and therefore tended to cluster around the mean. With the mean value established at < 2.5 , indicating “No opinion,” the test revealed that since answers appeared to be grouping in the range of values ≤ 2.5 , then participants seemed to be answering in agreement with the “Strongly agree”/“Agree” responses, meaning that an apology was perceived to have occurred. Since the groupings were less than the < 2.5 mean, it indicated that an improved sense of justice existed in the presence of the perception that an apology had occurred. Based upon that, the null hypothesis can be rejected and assumed to be false. Linear comparisons could not be performed because questions on the Mediating Party Questionnaire in Subscale E, asked for speculation on the part of the participant, and were not worded in such a way as to allow for a reliable comparison with the other Subscales, which were based upon parties in the mediations forming perceptions based upon their actual observations.

In order to analyze research Hypothesis 4, an independent t-test was utilized. The null hypothesis is as follows:

Ho 4: The perception of the occurrence of an apology does not affect the sense of fairness of the mediation outcome.

t-test

Since this is a directional hypothesis and the variable, fairness, is coded on the Questionnaire instrument as a range of values from 1-4, wherein a response of 1 represents total agreement (“Strongly agree”) and a response of 4 represents total disagreement (“Strongly disagree”), a mean value was established with the four possible

responses between the extremes. This mean value was determined to be < 2.5 , which represented a hypothetical response of “No opinion.” Statistically, then, this mean could be said to represent the null hypothesis itself. A *t*-test of the alternative hypothesis was performed, revealing a test statistic of -3.20 , with a *p*-value of $\leq .002$. Since the test statistic is negative, the indication is that participants’ answers were grouping in the range of values less than the < 2.5 mean. Since the mean of < 2.5 represents a hypothetical “No opinion” response, and answers were shown to be grouping in the < 2.5 range, then it can be said that the perception that an apology occurred has a positive effect on a participant’s sense of fairness of the mediation outcome. On this basis, the null hypothesis can be rejected and assumed to be false. Linear comparisons could not be used because questions on the Mediating Party Questionnaire in Subscale E, which pertained to fairness, asked for speculation on the part of the participant, and were not worded in such a way as to allow an appropriate comparison with the other Subscales. Questions in the other subscales reflect responses of participants who were reporting their perceptions based upon their actual experiences and observations during the mediation session.

Hypothesis 5 was analyzed using a one-way analysis of variance (ANOVA). The null hypothesis is as follows:

Ho 5: The perception that an apology occurred does not influence the relationship between mediating parties.

Analysis of Variance (ANOVA)

First, the data were statistically blocked, or separated by the variable, litigation. In Category A were those who were involved in Small Claims cases and Category B were those involved in Family and Divorce cases. For categories A and B, responses were provided in all four Mediating Party Questionnaire subscales. For the “Other” category, there were only responses in the Gave, Received, and No Apology subscales. Therefore, in analyses, the “Other” category was not included in the Gave and Received condition, which accounts for twenty-one items relegated to the “Other” category. An analysis of variance (ANOVA) was performed, making the preplanned comparison that $(\mu_A + \mu_B + \mu_C) = 3\mu_D$. In Block A, Small Claims cases, the comparison resulted in an F statistic of 3.32, giving a p-value of .076. Based upon this, it is necessary to fail to reject the null hypothesis; since in this case, it cannot be shown statistically, that an apology influences the relationship between parties in Small Claims cases. However, after the data were statistically blocked by Small Claims cases, the Category B comparison, comprised of Family and Divorce cases, showed an F statistic of 6.34, resulting in a p-value of 0.022. Since the test statistic is greater than one, it can be concluded that those participants in Category B perceive that the relationship between themselves and the other party is affected, and possibly even improved, more so than did those in the Category A, Small Claims cases. Therefore, in this case, the null hypothesis can be rejected. The results of the analysis of Hypothesis 5 are shown in Table 6.

Table 6

Analysis of Variance (ANOVA) for Effect of Apology on Relationship

Type of Litigation Blocked	SS	Mean Sq.	df	F value	p-value
Small Claims	1.997	1.997	1	3.32	.076
Family/Divorce	4.508	4.508	1	6.34	0.022

Duncan's Multiple Range Test was performed as a post hoc procedure to identify any differences existing within the subscales following the statistical block by litigation. The critical ranges were examined to determine which were significant. There were no differences between "No Apology," "Received an Apology, and "Gave and Received an Apology." Significant differences were found between "No Apology" and "Gave an Apology," with alpha at $\leq .05$. Because of the sample size in the "Gave and Received and Apology" subscale, the contrast between "No Apology," "Received an Apology," and "Gave and Received an Apology" is not powerful. Means and critical range values are shown in Table 7.

Table 7

Means and Critical Range Values for Post Hoc Analysis of Apology and Improved Relationship

	Means	n	Critical Range
No Apology	2.911	34	
Received	2.266	30	.955
Gave	2.000	2	1.005
Gave & Received	1.533	15	1.038

Research hypothesis 6, although related to hypothesis 5, focuses on the *importance* of improved relationships between mediating parties. The null is as follows:

Ho 6: There will be no association between *importance* of improved relationship and the occurrence of an apology.

Analysis of Variance (ANOVA)

To analyze this hypothesis, a one-way analysis of variance (ANOVA) was used. First, the data were statistically blocked, or separated by the variable, apology. Category A were those who gave an apology, Category B were those who received an apology, Category C were those who both gave and received an apology, and Category D were those who neither gave nor received an apology (No Apology). An ANOVA was then performed on the four blocks, making the preplanned comparison that $(\mu_A + \mu_B + \mu_C + \mu_D) = 4\mu_D$. The comparison resulted in an F-test statistic of 17.42, giving a p-value ≤ 0.0001 . Since the F statistic is greater than one, it can be concluded that there is a positive relationship between the perception of the occurrence of an apology and the importance of an improved relationship between parties. The null hypothesis can be rejected and assumed to be false. The results of the analysis of Hypothesis 6 are shown in Table 8.

Table 8

Analysis of Variance (ANOVA) for Apology and Importance of Improved Relationship					
Apology Blocked	SS	Mean Sq.	df	F value	p-value
Occur/Not Occur	12.296	12.296	1	17.42	$\leq .0001$

Duncan's Multiple Range Test was performed as a post hoc procedure to identify any differences existing within the subscales following the statistical block by apology. The critical ranges were examined to determine which were significant. There were no differences between "No Apology" and "Received an Apology." Significant differences

were found between “No Apology,” “Gave an Apology,” and “Gave and Received an Apology,” with alpha at $\leq .05$. Because of the sample size in the “Gave and Received an Apology” subscale, this contrast is not powerful. Means and critical range values are shown in Table 9.

Table 9

Means and Critical Range Values for Post Hoc Analysis of Apology and Importance of Improved Relationship

	Means	n	Critical Range
No Apology	2.764	34	
Received	2.000	30	.939
Gave	1.533	15	.987
Gave & Received	1.500	2	1.020

Finally, Hypothesis 7 was analyzed using a Canonical Correlation. The null hypothesis states:

Ho 7: The criteria for apology are not differentially related to affective mediation outcomes.

Canonical Correlation

A canonical correlation analysis was performed on two sets of variables. Set A, the dependent variables, was comprised of variables used in the set of criteria for affective outcomes, which were 1) improved self-esteem, 2) sense of empowerment, 3) emotional closure, 4) sense of justice in the mediation outcome, 5) sense of fairness of the mediation outcome and 6) satisfaction with the mediation process. Set B, or the

independent variables, was comprised of variables used to define the criteria for apology. They were 1) acknowledgement of a wrong done, 2) recognition of what the specific wrong done was, 3) responsibility taken for the wrong done, 4) affective response and 5) willingness to make amends. As shown in Table 10, the number of significant canonical relationships found was one. Table 10, beginning with item 2, further illustrates that as each subsequent variable was added, no significant relationship was shown. It is important to note that in the canonical correlation procedure the first few pairs of linear combinations, or canonical variates, generally account for most of the between association.

A close examination of the covariance matrix, shown in Table 11, shows all of the significant canonical relationships between the dependent and independent variables. The variable, affective response, which was significant at $p \leq .0001$, was the independent variable shown to be significantly correlated with five of the six dependent variables: self-esteem, empowerment, emotional closure, sense of fairness and satisfaction with the process. It can be said then, that when the wrong-doer apologizes and expresses some kind of affective response, previously defined in the literature review as remorse, regret or sorrow, either verbal or non-verbal, it is significantly related to the apology recipient's self-esteem, sense of empowerment, sense of fairness in the process, overall satisfaction with the mediation process, and achievement of closure to the issue which brought the parties to mediation. The sense of justice in the mediation outcome was significantly correlated with the independent variable, responsibility, which is a finding also supported by the literature. When a person apologizes and takes responsibility for the wrong done

or offense committed, the recipient of the apology has a greater sense that justice was served in the mediation.

Table 10

Canonical Variate Significance Values for Apology and Affective Outcomes Criteria

	Likelihood Ratio	Approximate F Value	Num. df	Den. df	Pr>F
1	0.143	2.87	30	p. 140	≤.0001
2	0.543	1.18	20	117	.284
3	0.788	0.75	12	95	.703
4	0.946	0.34	6	74	.911
5	0.997	0.05	2	38	.940

Table 11

Covariance Matrix of R Values for Dependent and Independent Variables of Apology and Affective Outcomes Criteria

		Independent Variables (Set A)				
Dependent Variables (Set B)		Offense	Recognition	Responsibility	Affect	Amends
Self-esteem		.116	.211	.114	.432*	.143
Empowerment		.202	.297	.129	.451*	.233
Emotional Closure		.135	.080	.302	.472*	.129
Sense of Justice		.254	.158	.317*	.231	.175
Sense of Fairness		.472	.357	.518	.602*	.204
Satisfaction with process		.258	.120	.442	.700*	.237

*Canonical Variate Significance Value

CHAPTER V

Discussion

It is difficult to deny that change is inevitable. It follows that when change and individual perceptions meet, conflict is also most likely inevitable. There is usually a natural resistance to both, and when acceptance of the change or conflict is unlikely, some kind of resolution must occur. This has had a great impact on how people resolve their disputes in light of the changes happening daily. Because the legal system, has been left with a great deal of the burden for helping people seek remedies to their conflicts, the courts have become over-burdened and so congested that the ordinary citizen must take a day off from work to pursue litigation for conflicts which could be remedied with alternative means, with less cost and stress to the individual. The necessity for an accessible and more immediate venue for resolution of conflicts became more apparent over time. Because of this fact, and as the Alternative Dispute Resolution movement began to expand, the state of Oklahoma made its contribution by establishing the Alternative Dispute Resolution System of Oklahoma. Its goal is to provide services to the court systems and individuals who are interested in resolving their disputes out of court. Thirteen Early Settlement regional offices were subsequently established to accomplish this task.

The purpose of this study was to examine several components surrounding the occurrence of an apology in mediation. These included how the occurrence of an apology might influence the likelihood of further litigation, how it might affect the relationship between mediating parties in terms of improving it and affecting the value placed on maintaining the relationship, whether the sense of justice and fairness of the mediation outcome was influenced by it, and six affective mediation outcomes listed below. Several criteria for apology existed in the literature, and the following were used as the variables to measure apology by, within this study, in light of the wrong done or offense committed: a) acknowledgement of it, b) recognition of *what* the wrong done or offense committed was, c) willingness to take responsibility for the wrong done or offense committed, d) evidence of affective response, such as shame, regret or remorse, concerning the wrong done or offense committed and e) willingness to make amends for the wrong done or offense committed. Affective mediation outcomes were determined by the following variables: a) improved self-esteem, b) sense of empowerment, c) achievement of emotional closure to the issue, which brought the parties to mediation, d) sense of justice in the mediation outcome, e) sense of fairness in the mediation outcome and f) a greater overall satisfaction with the mediation process. The research instrument was a Questionnaire survey constructed by the researcher, based upon experience and literature-based criteria. Contained within the Questionnaire were items specifically designed to measure the criteria for an apology and how it related to the possible affective outcomes of mediation and the variables which were listed above.

A regression analysis was used to determine the likelihood of further litigation by parties to a mediation who perceived that an apology had occurred. A Pearson product-

moment correlation analysis was performed to determine if any relationship existed between the perception that an apology had occurred and a participants' overall satisfaction with the mediation process. *t*-tests were used to determine if the perception of the occurrence of an apology had any effect on a participants' sense of justice in, and a participant's sense of fairness of, the mediation outcome. One-way ANOVA's were utilized to determine if the perception of the occurrence of an apology affected the relationship between mediating parties and if any importance was placed on the improvement of the relationship between the parties *by* the parties, following the perception that an apology had occurred. Finally, a canonical correlation was used to analyze the relationship between the set of criteria for apology and the set of affective mediation outcomes specific to this study.

The results of the study found a statistically significant result of $p \leq .0003$, which showed a high correlation between the occurrence of an apology in the mediation and the likelihood that a mediating party would pursue further litigation (Hypothesis 1). According to the statistical findings, an inverse relationship exists between the two. As the perception that an apology occurred increases, the likelihood of further litigation decreases. It appears that the perceived occurrence of an apology decreases the likelihood of further litigation. Considering the adversarial nature of our current legal system and its influence, it is not a wonder that we question whether or not an apology during mediation is appropriate. According to Schneider (2000a) it is the pairing of these two components which creates such "uncongenial soil for apology" (p. 273). Our system of jurisprudence is so predisposed to defending individual rights and aversion to admitting culpability that apology can be effectively prevented. Apology is equated with admitting liability under

the law, here in America, whereas in other countries, such as Japan, it performs the role of a restorative mechanism. Schneider states and this researcher concurs, “The very nature of our adversarial system is antithetical to the setting needed to allow an apology to emerge” (2000a, p. 273). However, when parties are invited and encouraged by the mediator to speak and to share feelings, without being defensive, it furthers the safe environment needed for an apology to take place. After all, mediations do deal with damaged relationships, on a variety of levels. An apology may appear to be of little consequence in light of the issues about which people mediate, however, it is a moment wherein meaningful exchange can occur, and often can be “the margin of difference, however slight” (Schneider, 2000a, p. 273) which will help parties reach a mutual agreement. The wrong has been acknowledged for what it was, responsibility for it has been taken, validation of the wronged party is a result of those actions, and amends are made through the mutually constructed agreement. When a mutual agreement is reached, then it logically follows that further pursuit of litigation is unlikely for the redress of the grievance, which brought the parties to mediation in the first place. It is also important to note that parties often interpret mediation as being a court process. This is evidenced by responses such as “I’ll have to ask my attorney,” or “It depends on what the judge says,” or even in their hesitation to allow the mediator to put anything in writing concerning an agreement, in spite of the fact that *they* have structured an agreement in mediation. The fact that this reflects an unclear understanding of what mediation is about, might well undermine the mediation process. If parties fully understand that mediation is *for* them and *about* them, and their agreements are a reflection of *their* decision-making, then

perhaps more settlements and less litigation would occur, following an unresolved mediated dispute, or one which resulted no agreement.

Initially, non-significant results were found concerning the occurrence of an apology and a party's overall satisfaction with the mediation process (Hypothesis 2). However, upon further analysis to discover possible reasons for this, statistically significant results *were* found and again, the correlations were high. For Small Claims cases a p-value of $\leq .0004$ was found, for Family and Divorce cases a p-value of $\leq .0001$ was found, and a p-value of $\leq .0002$ for the variable, Other, was evident. It is important to note that these results were achieved only when the data were blocked by litigation. When the data were analyzed together, as a whole, every possible answer available on the Mediating Party Questionnaire showed up. For instance, in Family and Divorce cases, the responses tended to be in the extreme (i.e. Strongly agree" or "Strongly disagree"). This is understandable, considering the Family and Divorce mediation dynamic. In Small Claims cases, responses tended toward the moderate range ("Agree" or "Disagree"). Analyzed together, the responses could not be distinguished from each other by litigation type, indicating that all answers were occurring with equal likelihood. When the data were blocked by litigation type, the differences could be seen. In fact, all types of litigation, Small Claims, Family and Divorce and Other, which included family-related issues, *all* participants, despite the type of litigation in which they participated, felt an increased satisfaction with the mediation process following their perceptions that an apology had occurred. Small Claims participants had a lower correlation than the other two types, in that regard, which might indicate that it is quite possible that it is the relationship factor inherent in Family and Divorce and Other cases, which account for such high

correlations. The Other category was comprised almost entirely of issues wherein some type of personal relationship between the litigants existed. All but one of the twenty-one cases in the Other category of litigation concerned some type of personal relationship or personal issue. The occurrence of an apology affects, in a positive way, the relationship between mediating parties. As it was outside the scope of this study, no analysis was done to discern the *precise* effect, but improved relationship was shown to have occurred *after* an apology did. And, the existence or lack thereof, of relationship between litigants affected whether or not there was a perception present that an apology *had* occurred.

Generally speaking, those who participate in Small Claims mediations tend not to have a personal relationship with each other, since most small claims issues revolve around the recovery of money or property, or restitution for the dissatisfaction with products or services, issues which are typically, non-relational. In this study, those cases, which fell into the Other category of litigation, and are often relegated to Small Claims court, revolved around issues which could easily be considered to be of a personal or relational nature, particularly those which were disputes among long-time friends and/or relatives who perceived that they had been disrespected in some way. Because of the specified Early Settlement categories, these Other cases could not be included in the Family and Divorce category, even though some type of personal relationship existed between the litigants. Interestingly, one case in the Other category initially did not seem to indicate that a personal relationship existed between the mediating parties, but did concern an issue which involved a *family member* of one of the mediating parties. Again, apparently relationship *is* a critical component in the mediation process, and whether or not an apology is likely to occur. This supports Tavuchis' (1991) assertion that relationship is

the critical determinant of the occurrence or non-occurrence of an apology.

Anthropologists have long argued that disputants who have multiple issues to resolve or who desire to maintain their relationship with the other party, will tend to rely on a collaborative procedure, such as negotiation or mediation, which naturally leads to a compromise or agreement. Disputants with single-issue grievances and no relationship to maintain will tend to rely on adjudicatory processes (Ciraco, 2000). This might constitute evidence for future research. Mediators might be trained to quickly discern the the relationship between the mediating parties at the table, and then structure the mediation and the languaging in it, so that the building of a bridge to personal relationship between the parties is begun, or enhancement of an already existing relationship, is encouraged. Interestingly, it is that very issue, which inspired this researcher to pursue this research. After a lengthy Small Claims mediation which should have settled in considerably less time, but did not, it became apparent that if the Defendant had, at any time, extended an apology for his rude behavior, the wealthy Initiator would have settled for much less, and might even have dismissed the entire claim to moneys owed. The Defendant saw her as his “landlady,” but he reminded the Initiator of her deceased son, by her report. It was the relationship the Initiator felt she had with the Defendant, which was important to her, not the money owed.

These goals of building and/or enhancing relationship between the parties possibly, might be accomplished through mastery of the transformative components of empowerment of the parties and recognition of commonalities between them, as posited by Bush and Folger (1994). Whereas litigation incites positional bargaining (Ciraco, 2000), recognition and subsequent empowerment of parties could re-position, if you will,

the positions, in order to serve interests and make needs more negotiable. One important way this might be accomplished is through less emphasis on technical skills in the training of mediators and more emphasis on the creation of their understanding of the theory behind mediation. What is the theory? Empirical studies of the mediation process have shown consistently high rates of settlement and high levels of participant satisfaction (Bowling & Hoffman, 2000). According to them, this seems to be the case regardless of philosophical orientation (evaluative vs. facilitative, or transformative vs. problem-solving). Mediation can even work when the mediator is untrained. So what makes the difference? Bowling and Hoffman (2000) assert, and this researcher wholeheartedly agrees, that it is not so much the theory as it is *who* the mediator is as a person. Technique and skill are important. Training to acquire skills is important. But the “combination of psychological, intellectual, and spiritual qualities that make a person who he or she is...[what makes] those personal qualities have a direct impact on the mediation process and the outcome of it” (Bowling & Hoffman, 2000, p. 6).

What are the qualities of successful mediators? Some are posited by Bowling and Hoffman (2000) and some by this researcher, and include the following characteristics: First, define yourself by who you are, not what you do. We are peace-builders and conflict resolvers, roles which are integral parts of our identities. It is more about *being* a mediator than *doing* mediation. Matz (1999, as cited in Bowling and Hoffman, 2000) said it best when he said, “In addition to what a mediator does, there is the matter of what a mediator is. Spirit emanates from being, just as articulately as it does from doing. More specifically, it is the mediator’s being, as experienced by the parties, that sends the message” (p. 17). A second characteristic is to be centered. It is difficult to bring peace

into the mediation if we are not at peace with ourselves, our circumstances or the world. Third, be congruent, an essential element of which is genuineness. Parties know if we are *there* (mentally and emotionally present) or not. Fourth, be human, but be aware of the feelings parties may evoke within us, so that we do not influence their agreements by inappropriate, overt self-disclosures, or on the contrary, maintenance of a rigorous impartiality, devoid of feeling. This does not mean relinquishing professional ethics or littering the mediation with our own issues. If we expect the parties to be open we should honor them with that same trait. Fifth, realize that our presence *will* influence parties, whether we say nothing or much. Therefore, awareness of details such as facial expression, other non-verbal cues, movement of self or objects (i.e. twirling a pen or other activity we might typically ignore) is important. Sixth, be ever mindful that we are engaged in creating relationship between parties. Restating, reframing and removing toxic language when doing so and appropriate use of levers, is critical. A seventh characteristic is to recognize that our personal charisma (or lack thereof) will influence parties' ability to negotiate successfully. We bring an energy to the table, positive or negative. Finally, trust the process, for it will transform on many levels. When we, as mediators, structure a safe environment, disputants can feel more relaxed in solving their issues and in structuring agreements that work for *them*, thus empowering them in the belief that they *can* solve their problems and reach an agreement without having it imposed upon them.

Hypothesis 3 was a directional hypothesis concerning a participants' sense of justice in the mediation outcome. This study showed a statistically significant result, with a p-value of $\leq .006$. The *t* test was done in such a way as to find the mean value of the

four possible responses on the Likert scale, which represented a hypothetical response of “No opinion.” The responses, in relationship to the mean value, revealed that participants’ responses were grouping more in the “Strongly agree” and “Agree” categories, or were answering in *agreement with an improved sense of justice when an apology was perceived to have occurred*. Since the scores were grouping less than the established mean of < 2.5 , participants tended to feel that justice was better served if an apology occurred. The negative test statistic of -2.80 , resulting from the *t*-test, indicated this trend, since the scores were less than the mean and subsequently closer to the “Strongly agree” and “Agree” answer options. Essentially, item 7 on the Mediating Party Questionnaire, pertaining to whether or not an apology was perceived to have occurred, was collapsed to a yes or no choice. Perhaps, given the opportunity to air grievances and their feelings about them through the mediation process, participants may have felt like they were better understood, and that being given the chance to structure their own agreements based upon those feelings, they came away with a sense that they had received a measure of justice which they believed they deserved. Often, being given the chance to share their particular slant and feelings about the issue, something which mediation allows, enables the party to recognize how and/or why the misunderstanding occurred, which set the wheels of litigation turning. It might also set the wheels of compromise and reconciliation turning, as well. Further, if information gathering is thorough, then parties have a chance to examine *their* part in the misunderstanding, and sometimes adjust their views of what justice is or should be in that particular case, and to extend an apology for wrong done. It has been said that talk starts conflict and talk ends it. This researcher would add that conversely, *not* talking can have the same effect.

In terms of fairness, the results from an independent *t*-test showed statistically significant results with $p \leq .002$. It was found that since the test statistic was negative, the answers were grouping in the range of values < 2.5 , the value which represents the mean score between “Strongly agree” and “Strongly disagree” on the four-point Likert scale, and a hypothetical answer choice of “No opinion.” Since the scores were grouping less than that mean, the indication is that *participants are in agreement* that they felt the outcome of the mediation was more fair, in light of their perception that an apology had occurred. Interestingly, although not measured in this study, results from this analysis also revealed that in general, Small Claims litigants who participated in mediation thought that Small Claims mediations tended to be more fair than they were just. This would seem to support the assumption that no matter what type of litigation it is, the opportunity to make feelings known, to have them acknowledged, recognized and validated, and to gain a sense of empowerment, through being able to create agreements which are not forced upon them by the court, contributes to a greater sense of fairness of the outcome. It would seem that when a party senses that he or she has a measure of control over how the dispute is to be resolved, what amends, if any, are to be made, and feel that they have been validated in the process, feelings that the mediation outcome was fair is a logical conclusion. It appears that the concepts of distributive, procedural and restorative justice are at work here. Distributive justice is concerned with how goods, assets, or resources are allocated and what criteria a party feels they need to receive in order for the outcome to be considered fair, in their view, and procedural justice focuses on the decision-making process which affects this distribution. Restorative justice seeks to repair what has been harmed. Since the heart of mediation is that each party

contributes to the construction of his or her own agreement and an apology is reparative work, it seems that parties would see an apology as a contribution to their feeling a sense of fairness in the mediation outcome. No matter the type of litigation, mediation apparently helps make that happen. And although this might seem simplistic, it is important to note that in order for the apology to occur some essential components need to be in place. One of these is the safe environment needed for the exchange of power, which takes place when one apologizes (Lazare, 1995b). Schneider (2000a) discusses the power of apologies in mediation and asserts that it *is* possible for people to apologize in mediation, but that in his experience, most of them need some assistance from the mediator to “get past defensiveness and fear of blame that preclude an apology” (p. 269). He asserts that a critical step in the process of assisting the parties in apologizing is the use of private caucusing to prepare the parties to be *ready* to apologize. Moore (2000) articulates well how the private meeting or caucus can often shift many elements of the conflict and help parties become more focused on the what is at the root of it. Sometimes, asserts Schneider (2000a), there is a bit of back-leading necessary or most parties will not be ready to apologize. “An apology involves such vulnerability that it is safe – often, the only way it is safe enough – if the mediator puts the apology in words and the parties simply indicate their assent” (Schneider, 2000a, p. 271). In order to fulfill one of the goals of mediation, which is the sharing of information between parties, preparatory work can and should be done when parties are together. Caucusing should be a supplemental means of furthering understanding and clarification.

Although not a measured variable in this study, the qualitative responses of many participants in it were reflective of moral beliefs or positions, which could be correlated

with Kohlberg's stage theory of moral development, and tended to support his empirical findings. They often did tend to reflect views distinctly linked to some moral theory, and this researcher observed a correlation between the theoretical link to morality and the sense of justice and fairness reported by participants in this study, in terms of mediation outcomes.

A one-way analysis of variance (ANOVA) was used to determine if an apology influenced the relationship between mediation parties in a positive way: Hypothesis 5). Initially, results shown were statistically insignificant at $p \leq .076$. From this score, it appears that the perception of the occurrence of an apology does not have a positive effect on the relationship between the parties in the mediation. However, once again, the Small Claims cases could have been a confounding variable. So when further analysis was conducted and the data were blocked by litigation type, Small Claims cases, the results *were* significant with $p \leq .022$. Again, it would seem that an apology makes a difference when the dynamic of relationship is a factor. When an apology was perceived to have occurred, participants felt that the relationship improved, more than those in the group wherein no apology occurred. Means and critical values were analyzed with a Duncan's Multiple Range Test post hoc analysis to determine whether giving or receiving an apology had the greater impact, with critical ranges examined to determine which were significant. There were two groups, A and B, concerning the occurrence of an apology in the post hoc. Group A contained those wherein no apology had occurred, those who had received an apology, and those who both gave and received an apology. Those who received an apology and those who gave and received an apology were also in Group B. The results showed no differences between the "No Apology" group, the

“Received an Apology” group and the “Gave and Received an Apology” group. Significant differences were found between those where no apology had occurred and those who had given an apology, with alpha at $\leq .05$. Mean values were as follows: “No Apology,” 2.911, “Gave an Apology,” 1.533, “Received an Apology,” 2.266, “Gave and Received an Apology,” 2.000. Perhaps because of the sample size in the “Gave and Received an Apology” subscale, the contrast between “No Apology,” “Received an Apology,” and “Gave and Received an Apology” is not powerful. The critical range values were as follows: “Received an Apology,” .955, “Gave/Received an Apology,” 1.005 and “Gave an Apology,” 1.038. The results of the Duncan post hoc analysis showed that *giving* an apology had the greatest impact upon a participant’s belief that the apology affected their relationship with the other party. This is a logical result, since giving an apology would most likely indicate that an acknowledgment that a wrong has been done or offense has been committed, is present. If the acknowledgment has occurred, then the injured party is validated and given back a measure of the power that was taken from them when they were injured. It would logically follow that a sense of improved relationship would then exist. And it is precisely the issue of relationship which is notable. Because litigants typically have no stake in a personal relationship when litigating in Small Claims court, as has already been discussed, whether or not an apology occurred would not influence the relationship between them, generally speaking. In this study, some Small Claims litigants were personally related, but the qualitative responses given to this researcher, which are not able to be fully discussed per Dispute Resolution Advisory Board guidelines for this study, indicated that most were reticent to sue in Small Claims court *because* of that personal relationship, and did so only because the

Respondent had in some way, disrespected or ignored them. It would seem, then, that the issue was not really what was being sued for, but an issue of threat to self-esteem, well-being, empowerment and/or identity. Milner (2001) correlates the experience of disrespect with a person's sense that injustice has occurred. It has been asserted that moral schemas are partially correlated with justice concerns, (Wendorf, et. al., 2002) and that in general, a person's primary goal is to see to his or her own personal interests (Kohlberg, 1984). Tyler, (1997), and Tyler & Lind, (1992) assert that people do not only act out of personal interest or for personal gain when they seek justice, because being treated fairly is about one's value within the group. It follows then, that an apology, which shifts the balance of power from the injurer to the injured, is a means of being treated fairly and thus validating one's value or self-esteem. Feeling validated and valued cannot help but affect the relationship between parties in a positive way. Mediators who encourage that through appropriate reframing and insightful restatement, could actually assist a party in expressing the apology, if only through assent (Schneider, 2000a).

In order to determine if the perception of the occurrence of an apology affected whether or not a participant placed importance on an improved relationship with the other party in the mediation, an analysis of variance (ANOVA) was used. Again, results shown were statistically significant with $p \leq 0001$. Means and critical values were analyzed in a Duncan's Multiple Range post hoc to determine if there were any differences in the means of the subscales, and to see if it was the giving or receiving of the apology, which had the greater impact. There were two groups in the post hoc analysis: apology occurring and apology not occurring. Group A of the analysis contained those who gave an apology, those who received an apology, those who gave and received an apology, and

those wherein no apology occurred. Group B also contained responses from those who had received an apology. Mean values were as follows: "No apology," 2.76, received an apology, 2.00, "Gave an Apology," 1.53 and "Gave and Received an Apology," 1.50. The critical range values were .939 for those who received an apology, .987 for those who gave an apology and 1.020 for those who both gave and received an apology. These means and critical values indicate that a statistical difference could not be shown between those who received an apology and the other groups. Those who answered that no apology had occurred had a statistically significant difference in the value they placed on the importance of an improved relationship. Apparently, those who neither gave nor received an apology did not place as much value on maintaining the relationship as did those who gave or received an apology. However, a statistical difference was shown for those who *gave* an apology. The results of this analysis indicates that the perception that an apology occurred has a positive affect on a party placing value or importance on an improved relationship between themselves and those with whom they are mediating, and it is the *giving* of an apology which has the stronger impact. The more likely it is that an apology is perceived to have occurred, the more likely that participants will value the importance of the relationship, and intuitively, might value maintaining that relationship. Qualitatively speaking, many responses from participants revealed that there might be a range or continuum, in terms of the level of importance placed upon improving the relationship with the other party. For instance, because the data were collected from Early Settlement regions which are comprised largely of many small towns within their respective counties, it might be that an improved relationship is important for no other reason than the likelihood that the litigants would be seeing one another in local

department stores and other small businesses which service their communities. Several participants shared that if mediation did not improve the relationship between them, seeing one another in a public place would be extremely uncomfortable for them.

Because of history and type of personal relationship existing between the parties in Family and Divorce cases, not only an improved relationship was important, but an *ongoing* one was important to them as well, a concept which was not measured, but was revealed consistently in qualitative responses. Again, the type of litigation could be a factor. As was mentioned, those in Small Claims mediations tend not to have the established relationships and history that those in a Family and Divorce mediation most likely have. Generally speaking, those who come to Small Claims court come to get property, money, or some tangible compensation for goods or services provided. As noted earlier, the relationship factor was evident even in Small Claims cases, and sometimes Initiators were suing because they either had not or could not communicate with the Respondent about the issue, or were not able to express their feelings about being disrespected by the Respondent. Because Family and Divorce mediations typically involve children and/or personal property, which has been jointly owned, emotional attachments are already in place and relationship already exists. Therefore, an apology is highly regarded and can be used as a tool to open communication, assuage old hurts and possibly continue the bridge-building process. This is especially true if young children are involved, because with joint custody or “co-parenting,” as mediation prefers to language and reframe it, the history does not end with the divorce and division of assets. Both Hypotheses 5 and 6 are congruent with Tavuchis (1991) assertion that relationship

is integral to apology. There must be a valued relationship between offender and offended if the apology is to work. This study supports that assertion.

Finally, to determine the relationships between the criteria for an apology and the affective mediation outcomes used in this study, a Canonical Correlation was used.

Improved self-esteem, sense of empowerment, emotional closure, sense of justice in the outcome, sense of fairness of the outcome and overall satisfaction with the mediation process were the set of dependent variables used to measure affective outcomes.

Acknowledgement of a wrong done, recognition of what the wrong was which was done, taking responsibility for the wrong done, affective response concerning the wrong done and being willing to make amends, were of independent variables used in the set of

criteria for apology. Not surprisingly, the correlations, which fell into the expected range, were numerous. The results showed one variable in each of the canonical correlations between the sets of independent and dependent variables to be significant at $p \leq .0001$.

Of the independent variables used to define the set of criteria for apology, affective response was the variable which correlated with five of the six variables used for the criteria set of affective mediation outcomes. Apparently, showing some type of affective response on the part of the apologizer, concerning the offense which brought the parties to mediation,

was the variable most correlated with the apology recipient's self-esteem, sense of empowerment, achievement of emotional closure to the issue which brought them to mediation, sense of fairness of the mediation outcome and being satisfied with the

mediation process in general. This result is congruent with the literature on criteria for apology. All theorists who were reviewed in this study, in terms of their contribution to the findings related to apology criteria, noted that for the offender to acknowledge to the

offended that a wrong had been done was the first in their respective sets of criteria. This acknowledgment was most likely to be seen when the apologizer showed some kind of remorse, regret, tears sorrow or other affective response, which is not merely acknowledging guilt (Van Ness & Strong, 2003). The victims or those offended need to know that their perpetrators acknowledged that a wrong had been done, recognized what the wrong was, and then exhibited *some* type of affective response, either verbal or non-verbal. These results show that participants felt better about themselves, got some emotional closure to the stressful conflict which brought them to mediation to begin with and felt more empowered because their being offended or hurt had been acknowledged or validated. The sense of empowerment could well have come from their self-esteem being elevated, and vice versa. It would follow that the recipients of the apology might well have felt that the outcome of the mediation was more fair, quite possibly because mediation allowed them the opportunity to be *heard* and when they felt that the *other party* had heard them, as evidenced by the apology. Because the apology, which encompasses acknowledgment of a wrong done, recognition of what the wrong was, and has the element of affective response concerning the wrong done, it logically follows that the participants experienced greater satisfaction with the mediation process and would likely use it again in the future as an alternative to court.

The only variable in the criteria for possible affective mediation outcomes, with which affective response was not significantly correlated, was the sense of justice. Again, Small Claims cases could account for some of this variance, in that those litigants typically felt justice had been served if the outcome of the mediation resulted in a court judgment for them. In other words, if they got what they sued for, they felt justice had

been served and fairness was implicit in the outcome of the litigation. What was just was fair and what was fair was just--and what was just was what litigants believed they were owed. Of the other canonical variates, justice was highly correlated with the apology criteria variable, responsibility. This would indicate that when a party takes responsibility for a wrong done or offense committed, the other party feels that justice is better served, again a result supported by the literature. The results of this analysis have important implications for mediators, mediation/negotiation trainers and mediation training programs.

Implications for Theory and Mediators

This investigation addressed how and whether an apology affected mediation outcomes. Affective response was the apology criteria most closely correlated with five of the six criteria for affective mediation outcomes, which were improved self-esteem, emotional closure to the issue(s) which brought the parties to mediation, sense of justice in the mediation outcome, sense of fairness of the mediation outcome, feelings of empowerment, and overall satisfaction with the mediation process. The fact that affective response was found to be most closely correlated with five of the six affective outcome variables should inspire mediators to focus on Stage II of the mediation process, the Problem Determination phase, as described in the Mediation Training Manual and Resource Guide used for Oklahoma Early Settlement mediator trainings. In this phase, it is important to restate and reframe parties' comments in order to assist all parties in understanding one another and their feelings about the issues. Often, reframing can be

challenging to the mediator, and is often merely a restatement (or parroting) only, and not a genuine restatement and reframe. If both occur, it is intuitively logical that more information will be brought out, giving the parties a better chance of more clearly understanding the feelings and views of each other. When this happens, acknowledgment that a wrong has been done, which has clearly been injurious in some way to the other party, can occur. When the information is brought out and parties have the opportunity to see more clearly *what* harm has been done (recognition), then perhaps the injurer will be more inclined to apologize. Inherent in mediation is that transformative quality.

Interestingly, while conducting the Mediation User Survey, which is a standard Early Settlement procedure to determine satisfaction levels of the participants in mediations, the statements which most frequently reflected a lower score on the five-point Likert scale, were statements 4 and 5 (see Appendix D). A response of 1 on the Likert scale meant “Strongly disagree,” 2 reflected “Disagree,” 3 reflected “Not sure,” 4 meant “Agree,” and 5 meant the party responded, “Strongly agree.” Statement #4 on the Mediation User Survey Form states, “The mediator asked appropriate questions to determine the facts of the case.” Responses to this question reflected scores which were consistently in the 2-4 range. Statement #5 says, “The mediator helped me to generate options for settling the dispute.” This survey statement typically reflected scores again, ranging from 2-4, but rarely a 5. An area for further training, it would seem, would be in educating mediators how to restate, reframe and ask insightful questions designed to initiate communication and information-gathering. This would assist parties in being more communicative in terms of defining the problem as they see it, and generating more options for creating their own agreements. Further, if mediators are to be efficacious in

maximizing what Schneider (2000a, 2000b) refers to as opportunities for acknowledgement of wrong-doing by one or both parties, and for sharing of feelings between parties concerning the issues on the table, then educating the mediator to encourage open communication between the parties through their own appropriate communication, would assist with generating agreement options, while at the same time not *directing* parties to choose one idea or the other in terms of their agreement. The quality Kottler (1991) calls personal power, is similar to what Bowling and Hoffman (2000) refer to as presence. Gold (1993) describes presence as having the characteristics of being centered, being connected to one's governing values and beliefs and highest purpose, making contact with the humanity of the parties and being congruent [or genuine] (as cited in Bowling & Hoffman, 2000, p. 14).

Since this study shows that affective response is the one element of an apology with the greatest potential for elevating self-esteem, fostering empowerment, generating feelings of fairness about the mediation outcome, being able to get some emotional closure to the issues which brought them to mediation, all of which contribute to an overall satisfaction with the mediation process, no matter the type of litigation, it would seem that all manner of affective outcomes besides the ones used in this study, are possible. Mediations can be shortened and dockets cleared more quickly are but two possibilities. A transformation of human beings can be made possible by their being able to gain some emotional closure to stressful issues and let go of ill-will and thoughts of anger and revenge. Because self-esteem is improved, litigants can feel a greater sense of empowerment and walk away with a sense of satisfaction that what happened in terms of the mediation was worth the effort. While every social interaction, especially conflict

resolution, is transformative in its own way, the data herein, supports a transformative model. Chupp (1993) notes that transformation takes place only when the creative spiritual energy within each person comes to life and results in an internal shift in perceptions. Conflict can narrow and distort perceptions, but transformation broadens them. And as such, it would seem that this spiritual process of transformation brings about a marriage of internal and relational dynamics, such that we might not be aware of the spiritual work being done in the process of resolving the conflict.

Boulding (1989) reminds us that peace-making demands specific crafts and skills which must be taught, so that more and more people begin to deal with conflict from an integrative standpoint. In the relationships which make up social and political life, as well as in the structures and institutions in which they are embedded, the success with which these skills are encouraged and operationalized will determine whether, in the end, we are war makers, or peace makers. May we not cease striving to be the latter.

Limitations of the Study

The limitations of this study have affected its generalizeability of it. For instance, what might be considered an apology in one geographic region, may not be considered one across the country. The sample size was smaller than was optimal further limiting generalizability. Some of the participants had difficulty remembering the mediation, and by self-report, felt stressed about having to either a) go to court or b) participate in mediation. Further, room for qualitative responses was not built into the Questionnaire Survey. These responses, which the researcher received but was unable to specifically

incorporate into the study, may have been a limitation. Because of the strict confidentiality issues inherent in mediation and the structure which was necessarily put in place by the Dispute Resolution Advisory Board, which asked that the researcher not probe or collect qualitative data which could possibly endanger the confidentiality necessary to mediation, and which could identify litigants in the event of a third-party breach, an additional limitation could be present.

Also, although gender was approximately evenly divided among participants, the study does not allow for cultural, ethnic or religious differences concerning what an apology means, or even whether or not one *should* occur.

Another limitation existed to the study in that the Questionnaire Survey was conducted over the telephone, omitting important non-verbal cues and increasing the likelihood that the questions might not be fully comprehended. Any disability, such as hearing difficulties, could have played a factor in responses, and the participant could have been reticent to mention the handicap or was unaware that they had misinterpreted the question. Another limitation to doing the telephone survey, is that individuals who have struggled with protracted conflict or had been experiencing personal difficulties, such as financial challenges, which caused them to be litigants in Small Claims case, found the questions to be of a sensitive nature and were reticent to discuss the mediation. Of course, conversely, an advantage of the telephone Questionnaire is that there is a reduction of bias as compared to the face-to-face interview.

Concerning the Mediating Party Questionnaire, several amendments and deletions could make it a more effective instrument. These include: 1) avoiding “leading” questions, such as omitting the qualifier, “because an apology occurred.” For example,

instead of “Because an apology occurred I believe justice was better served,” could be refined to “I believe justice was better served.” This would allow each subscale to stand on its own, by having language consistency, which would decrease the likelihood of confounding information. Yet another way to improve the Mediating Party Questionnaire would be to pilot it on actual former litigants in mediations. This would assist in refining the wording and clarifying the constructs to be more “participant friendly,” since the questions would be worded from the viewpoint of actual participants in a mediation.

Another limitation to the study is that the participants were largely from only two regions: the North region and the Northwest regions, which makes the study ungeneralizable not only to other regions of the country, but to other more metropolitan populations. A larger, more heterogeneous population would be beneficial.

Future Research

Many of us can recall conflicts wherein we may have felt that we experienced a significant change or transformation, in the process of resolving it. Inner healing may have occurred and those in the conflict became reconciled with one another, even though in the beginning, the only goal which may have mattered was ending the dispute. The results of this study suggest future research may be warranted in the following areas:

1. Research into the spiritual nature of the transformative mediation model, and into the transformative potential of the mediation process itself, would be highly beneficial.

2. More research into the dynamics of power balance and the shift of power which takes place when an apology occurs, would assist mediators in being able to structure appropriate questions and responses to create the safe environment needed for the exchange of power to take place.
3. Similar to #2, research into what makes a safe environment is warranted. Examples of questions relevant to that are 1) What colors are best suited to safety? 2) What should mediator's wear to foster trust, and subsequently contribute to the safe environment needed to apologize? 3) Does the type of mediation dictate what the mediator should wear in order to foster a safe environment? 4) How do non-verbal cues from the mediator influence safety and power balance in the mediation session and what cues should be avoided at all costs if that objective is to be achieved?
4. A comparison of how culture, religion and ethnicity affect apologies would be extremely beneficial to conflict resolution/reconciliation research and apology.
5. What qualifies as a *genuine* injury (Schneider, 2000a) is highly subjective and should be investigated.
6. Is a "genuine" apology an "effective" apology, and if so, how are they alike? How are they different?
7. The effect an apology has on one's self-esteem, as opposed to one's sense of self-worth might show a significant distinction and be worthy of research.
8. What distinguishes self-esteem from well-being, and would an apology make a difference to one but not the other?

9. What types of training programs would identify specific areas in which mediators need to grow? (I.e. languaging and reframing skills and personal development, including identification of personal biases, so as to create a safe environment and facilitate the occurrence of an apology?)
10. How could a training program be designed to focus *specifically* on the personal development of the mediator, which was discussed in Chapter 5.
11. What role can or should the academic play in conflict research?
12. What ways might a mediation program benefit academia, especially in terms of better student/faculty relationships?
13. Since this study was conducted on the within-group of apology *occurring* only, a stronger study would result if groups of an apology occurring and one not occurring, were to be compared.

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Appendix A

Initial Petition Letter

January 28, 2003

Ms. Sue Tate, Director
Alternative Dispute Resolution System
1915 N. Stiles, Ste. 305
Oklahoma City, OK 73105

Dear Sue,

I am hoping that this finds your New Year off to a wonderful start! You may recall that I have been an Early Settlement North volunteer since 1999 and am certified in Basic Mediation training, Family and Divorce, Parent/Teen and IDEA. I have also been working toward my doctorate in Educational Psychology and am now through with all coursework and am "ABD," (all but dissertation).

I am writing to request your permission and your assistance with my doctoral dissertation research. You might remember that I have long held an interest in the effects of an apology on the mediation process, and will be completing my dissertation on that topic. I would like to draw my research population from the cases which have been settled, with or without agreement, within the last 90 days and those currently being mediated, taking these from the existing ADR regions in Oklahoma. I would like to confine it to the North region, if possible, depending upon the number of cases available to draw from.

Being a licensed therapist and knowledgeable of the mediation process, I understand the sensitive confidentiality issue. That is congruent both with my need to have this be a "blind" study where I am concerned, and with ADR's confidentiality guidelines. I need your help to brainstorm how I might use this population while keeping the above needs in mind. I would like the study to be only court-ordered cases referred to Early Settlement, which I understand to be about 80% or more. Since they are court-ordered they would be, essentially, public record. Using Early Settlement cases already on file and those currently being mediated, would both simplify the data collection process and make constructing the Consent to Participate letter better understood, as it would be coming from the Early Settlement program, which the participants are already familiar with. I believe their experience with mediation would make them more comfortable and more likely to participate in this study, the results of which I believe are very valuable to us as mediators, as well as to the Early Settlement program itself.

Potentially, the questionnaires would be assembled in packets with no personal identifying information other than the region where the case is mediated and a research identification number that will be assigned, so that when they are mailed back to me, I, nor anyone else will know from whom they came. Absolute confidentiality of the participants is thereby strictly protected, and will be explained as such in the packet, which is mailed to the parties.

I would like to talk with you about this soon, Sue, as I understand the Advisory Board does not meet every month and I am on a sensitive timeline, as you remember from your own thesis! I have enclosed a draft of the questionnaire, which will be piloted twice, once with a team of

experts in mediation, one of which I would like to be you, and with a random population at OSU. Any revisions suggested should leave the questionnaire fundamentally the same.

I understand that the Advisory Board may want an opportunity to discuss this with me and I would be happy to address this at the next Advisory Board meeting, as part of the agenda. Since I must also submit this both to my doctoral committee at the Proposal Hearing, currently scheduled for mid-March, and to the Institutional Review Board of OSU for their final approval for the study to begin, I must have the population in place first, as you know.

I am very excited, Sue, both about the research itself and the fact that after eight long years I can potentially achieve one of the desires of my heart. I have loved working in the Early Settlement program and being allowed to be a part of it, and especially getting to work with Vicki as a Director. I fully support ADR and believe that this research project will contribute to the existing body of knowledge concerning mediation and its benefits. I would, of course, make the results of this study available to you and the other directors upon completion, should you desire. Below please find my contact information.

I thank you for the privilege of serving as a mediator in this program, Sue, and look forward to your input and an opportunity to address any questions or concerns. If you would like, you may email me and give me a time to call you and we can make an appointment to either talk on the phone or for me to come to OKC. Either way, I look forward to hearing from you soon!

Most sincerely,

Kay Miller

Enclosure

Contact information:

S. Kay Miller

2402 N. Glenwood

**Stillwater, OK 74075 Phone: (home): (405) 377-2323, (cell) (405) 880-6624 or my
Committee Chair, Dr. Kay S. Bull, at (405) 744-9444, kbull@okstate.edu**

E-mail: skmiller@brightok.net

Appendix B

Supreme Court of Oklahoma Approval Letter

**THE SUPREME COURT OF OKLAHOMA**

**Administrative Office of the Courts
1915 N. Stiles, Suite 305
Oklahoma City, Oklahoma 73105**

**Howard W. Conyers
DIRECTOR
(405) 521-2450**

May 22, 2003

**S. Kay Miller
2402 N. Glenwood
Stillwater, OK 74075**

Dear Kay:

I have reviewed the "Mediating Party Questionnaire" (copy enclosed) for the research project you have proposed regarding the effects of apology in mediation. I believe that the information gained through your research may assist Early Settlement mediators in better understanding the dynamics and benefits of mediation.

This letter is sent as official authorization that the Early Settlement Mediation Programs of Oklahoma's Alternative Dispute Resolution System shall serve as sponsors of the project by utilizing you as a "person employed to assist a mediator" to conduct follow-up interviews with persons who have been named parties to mediations conducted by mediators certified, assigned and authorized pursuant to the Dispute Resolution Act, 12 O.S., Supp. 2001, § 1801 - 1813.

I appreciate your work with the Dispute Resolution Advisory Board and with the committee appointed by Board Chairman Jim Cox in refining both the process and instruments required for the research project. Please keep me and the Board informed as your research project progresses.

Cordially,


Howard W. Conyers
Director

Enclosure: Mediating Party Questionnaire

cc: **Jim Cox, Dispute Resolution Advisory Board Chairman
Dr. Kay S. Bull, Oklahoma State University, Graduate Committee Chairman**

Appendix C

Dispute Resolution Advisory Board Procedural Outline

Dissertation Data Collection Using Alternative Dispute Resolution (ADR)
Early Settlement Population
Procedural Outline

The following is an outline of the proposed procedure to be used in gathering data for research on the role of apology in mediation outcomes, a doctoral dissertation by Kay Miller of Oklahoma State University.

1. The researcher, Kay Miller is an Early Settlement volunteer. Ms. Miller will conduct the routine Follow-up Interview, a standard procedure in Early Settlement offices. The names of participants who were referred to Early Settlement by the court or by another source, including self-referral, will be taken from existing Early Settlement files, which were referred to mediation by the court. One additional question will be added to the existing questions on the Follow-up Interview, asking parties if they would be willing to participate in a research study. If they have no objections, the attached consent, which covers rules of confidentiality, will be read to them. Verbal consent to participate in the study will be obtained. After this is done, a convenient time will be established to contact the party to complete the Questionnaire survey. Since the study is sponsored by ADR all the legislated protections of confidentiality will apply. To avoid problems with possible breach of confidentiality, Kay Miller will not collect data on any case wherein she acted as mediator.
2. At the time of the Follow-up Interview, a general PIN number, will be assigned to those who agree to participate in the study. (See item 4 below.) The general PIN number will be shared by all participants of the study, identifying them as participants, so that they may contact either the researcher, the Chair of the doctoral committee or the Chair of the Institutional Review Board (IRB), with any questions or concerns they might have about the study or the confidentiality already afforded them as mediating parties. The contact telephone numbers will be given to the participants at the time of the initial call, should they desire to inquire prior to completion of the Questionnaire. Each name and corresponding phone number will be on a separate sheet of paper. When the Questionnaire-specific PIN number is assigned to the Questionnaire survey at the time of the telephone call, the name and phone number which was initially used to contact the party will be shredded, leaving no connection between the names of the participants in the study and the party who participated in the mediation. The Early Settlement center will maintain records of the survey, but the survey will be identified solely by the second PIN number. This procedure prevents any third party breach from happening, as set forth in the state statute guiding Alternative Dispute Resolution (ADR). No participant or mediator is liable or subject to subpoena for any reason related to this study or to the subject mediation, and there has been no disclosure of information to a third party outside the Early Settlement process. Since any discussion of the session has been made to an Early Settlement volunteer pursuant to research sponsored by the program, every

effort has been made to bring the Questionnaire survey under the confidentiality protection afforded by Rule 10. Even if a court ruled that the Questionnaires were discoverable, the Questionnaires could not be identified with any mediating party.

3. Following verbal consent to participate, the researcher will explain that a copy of the Questionnaire survey, which is to be used in the study, will be mailed to them and that the researcher will phone them in a few days following receipt of it, in order to complete it over the telephone. It will be noted to them that the Questionnaire will take no more than fifteen or twenty minutes of their time, depending upon their responses.
4. The participant will be phoned to complete the Questionnaire. When phone connection is made, a PIN number will be assigned to the Questionnaire held by the researcher. The participant will not know this PIN number. The researcher will record their responses on a duplicate copy of the Questionnaire, which the participant has been mailed.
5. The responses of the participants will be entered as data into the appropriate data processing program in order to accommodate the appropriate statistical methodology specific to the research question being answered by that response, and will be analyzed as such. Only the assigned Questionnaire-specific PIN numbers will be used to designate data entered. No names will be used in data entry. The name and phone number of the participant will be shredded after the interview.
6. All responses will remain confidential. No questionnaire held by the participant will be coded in any way, so no relationship can be established between the participant and his/her responses. The researcher's copy will have only a PIN assigned for data entry as described above in item 5. Since Early Settlement will sponsor the research study, as such, the research will be conducted under the ADR umbrella. All data gathered will be considered privileged and confidential information as provided for in O.S. Title 12 S 1805 and Rule 10, which outlines the confidentiality of the mediation proceeding for both mediators and for outside parties attending such. Items A-C of Rule 10, "Rules and Procedures for the Dispute Resolution Act" are shown below. For complete reference to rules for dispute resolution see Appendix C, "Confidentiality of Proceedings," Title 12, Section 1803, et. seq.
7. Since Early Settlement is sponsoring the research study, (See Appendix A) as such, the research would be conducted under the ADR umbrella. All data gathered will be considered privileged and confidential information as provided for in O.S. Title 12 S 1805 and Rule 10, which outlines the confidentiality of the mediation proceeding for both mediators and for outside parties attending such. Items A-C of Rule 10, Rules and Procedures for the Dispute Resolution Act are shown below.

8. Rule 10-- Rules and Procedures for the Dispute Resolution Act

Item A: “Any information received by a mediator or a person employed to assist a mediator, through files, reports, interviews, memoranda, case summaries, or notes and work products of the mediator, is privileged and confidential.”

Item B: “No part of the proceedings shall be considered a matter of public record.

Item C: “No mediator, initiating party, or responding party in a mediation proceeding shall be subject to administrative or judicial process requiring disclosure of any matters discussed or shall disclose any information obtained during any part of the mediation proceeding.”

Appendix D

Mediation User Survey Form

(Follow-up Survey to be Completed by Party)

**Mediation User Survey Form
TO BE COMPLETED BY PARTY**

Please promptly fill out this form after the mediation conference and return it to the Early Settlement office as soon as your mediation is over.

Name of mediator _____

Case Name _____

Date of Conference _____ Are you the: plaintiff defendant

Did you have an attorney represent you in this case? yes no

If not, did you have any difficulty representing yourself? yes no

Did you reach an agreement and settle your case today? yes no

Please circle the number which best reflects how you feel about each of the following statements:

	1-strongly disagree	2-disagree	3-not sure	4-agree	5-strongly agree
1. The mediator explained the mediation process clearly so that I knew what to expect during the mediation.	1	2	3	4	5
2. The mediator allowed me to fully present my case.	1	2	3	4	5
3. The mediator carefully listened to my side of the case.	1	2	3	4	5
4. The mediator asked appropriate questions to determine the facts of the case.	1	2	3	4	5
5. The mediator helped me to generate options for settling the dispute.	1	2	3	4	5
6. The mediator treated all parties equally.	1	2	3	4	5
7. Overall, I was satisfied with the mediation session.	1	2	3	4	5
8. Overall, I was satisfied with the way the mediator handled the session.	1	2	3	4	5

Please provide any comments you wish to make regarding the mediator or the mediation process on the back of this form. adapted from NIDR Conflict Resolution Institute for Courts

Appendix E

Additional Question Added to Follow-up Survey

Thank you for your feedback!

Because Quality Assurance is very important to us we would like to include you in a study for further research. This research would consist of answering a few additional questions about your mediation experience; you would be contacted by phone at the time you designate for the contact.

Would you be willing to participate? _____ Yes _____ No

If you are willing to participate in further research, please complete the following information:

Name: _____

Address: _____

City, State, Zip Code: _____

Phone Number: _____

Best Time to Reach you: _____

Appendix F

Explanation of Research Study

YOUR PIN CODE IS G-4456

Dear Participant,

My name is Kay Miller, and I am a Certified Mediator with Early Settlement Mediation, through which your case was mediated. I am also a doctoral student in the Educational Psychology program in the School of Applied Health and Educational Psychology at Oklahoma State University. My Committee Chairperson is Dr. Kay S. Bull, and I am currently conducting the research necessary to complete my doctoral dissertation. As research is an essential component to completion of the program, as well as a benefit to future studies in mediation, your participation is greatly appreciated. Without it, this research could not be done.

The purpose of this research study focuses on the role of apology in mediation outcomes. A questionnaire has been designed to gather information about that subject, and is important *whether or not you reached an agreement*. During the routine Follow-Up Interview, which you recently completed by phone, you indicated a willingness to participate in this study. A copy of the Verbal Consent to Participate has been enclosed. **THERE IS NO NEED TO SIGN THIS FORM.** I have also enclosed the Questionnaire for your benefit, as it is sometimes easier to answer verbal questions when we have a visual copy of them to look at. The Questionnaire will be completed over the phone and should take no more than 15-20 minutes of your time, depending upon your responses. **THERE IS NO NEED TO FILL OUT THE QUESTIONNAIRE.** These copies are for your records only, if you choose to keep them

In order to increase your comfort level, there are a few points I would like to mention so that you may be fully informed about this process. First, I will only be asking the questions on the Questionnaire pertaining to the subject matter. Secondly, absolutely *no personal information about or details concerning your mediation are known to me*, unless I may have been your mediator. Your case was randomly selected out of those mediated within the last 4-6 months. The potential risk in this study is that I may have been your mediator and recognize your name. However, this risk is mitigated both by the existing Rules and Procedures of the Dispute Resolution Act addressed below, and the fact that the questionnaires will be assigned with **PIN codes, not names**. I will know your name only because your mediation was referred to Early Settlement and it was used to conduct the routine, post-mediation Follow-up Interview. Thirdly, as you were informed in your mediation, all notes are destroyed by all parties, including the mediator, prior to leaving the mediation. Oklahoma law provides that mediation is a confidential, private process and that information obtained from a mediation may not be disclosed unless otherwise required by law. (For example, a mediator must disclose information brought to his/her attention that an elderly person, a person with disabilities or a child under the age of eighteen (18) has been abused or neglected.) Therefore, as a Certified Mediator under the Dispute Resolution Act, 12 O.S. Supp. 1991, sections 1801 et seq.,

and the Rules and Procedures for the Dispute Resolution Act, I am bound to confidentiality. **This means that no one will know who you are or what your answers were, or even that you ever participated in a mediation.** Even I, the researcher, will not be able to connect your answers with your name once the data enters the statistical analysis process. Further, the Institutional Review Board of OSU requires that all data gathered be kept confidential, as well. Therefore, any and all information gathered for this study is to be kept in a locked file cabinet in the Early Settlement North office, located on the second floor of the Payne County Courthouse in Stillwater. Lastly, ***your name will not be used in this study.*** Should you desire to contact me, Dr. Bull, or the Institutional Review Board (IRB) at OSU, please **use the assigned PIN code instead of your name. This code is located on the top of your Questionnaire, the top of this Explanation and at the bottom of this sheet.** Contact numbers are located at the bottom of this page.

Your participation in this study is of tremendous value both to this researcher and to Alternative Dispute Resolution. Your input will not only make this study possible, but will help contribute much to ongoing research in this field, which will in turn, benefit future mediations. As you know, today the courts have been left with much of the burden of resolving conflicts and have trouble keeping up with the number of cases with which they are presented. Ordinary citizens, although quite capable and knowledgeable in day-to-day life, are sometimes uncomfortable in a court environment. Additionally, persons must take time off of work to be in court and often end up with decisions they may not have desired or expected. The Alternative Dispute Resolution (ADR) System was established to provide equitable, accessible and prompt ways to solve problems and resolve disputes in an informal environment, with a trained third party mediator. This has resulted in greater satisfaction on the part of mediating parties, since they are able to actively take part in constructing their own solutions. This research study will provide empirical data, which will be used to assist mediators in becoming even more proficient in supporting those parties as they achieve that goal.

Should you have any questions concerning this study or subject rights, you may contact any of those listed below, **using your PIN code** located on the front page. Again, thank you for your participation and for being a part of this valuable study.

Sincerely,

Kay Miller

Contact information:

Kay Miller, Researcher	(405) 880-6624
Dr. Kay S. Bull, Committee Chair	(405) 744-9444
Dr. Carol Olson, IRB Chair	(405) 744-5700

MY PIN CODE IS G-4456 Please use this code instead of your name for any inquiries you might make. Thank you!

Appendix G

Verbal Consent to Participate Form

YOUR PIN CODE IS G-4456

I agree to voluntarily participate in the research project exploring the effects of apology on mediation outcomes. I understand that *my identity will be kept strictly confidential*. This means that *no one will be aware of who I am*, what my answers to the questions were or even that I participated in a mediation of any sort.

I understand that at any time during the process of the interview I may decline to participate. I understand that the information gathered will be used for educational purposes, to train mediators and as such, may be published in a journal article.

I understand that Ms. Kay Miller, a doctoral student at Oklahoma State University, is in charge of the research study. I further understand that I can contact Ms. Miller or her supervising faculty member and Committee Chair, Dr. Kay S. Bull, at the telephone numbers listed below if I have any questions regarding this study. I also understand that I may contact Dr. Carol Olson, Chair of the Institutional Review Board (IRB), if I have any questions regarding subjects' rights.

I understand that I am to use the PIN number located at the top of this page to protect my confidentiality when contacting these persons.

Contact Information:

Kay Miller, Researcher	(405) 880-6624
Dr. Kay S. Bull, Committee Chair	(405) 744-9444
Dr. Carol Olson, IRB Chair	(405) 744-5700

Appendix H

Mediating Party Questionnaire
(Questionnaire Survey Instrument)

Copyright © S. Kay Miller, Ph.D.

PIN Code: G-4456 *Please use this pin code instead of your name for all inquiries you might make concerning this survey. Contact numbers are located at the end of this Questionnaire.

SECTION A

Directions: Place your copy of this survey in front of you for ease in following along with the questions. It is not necessary to mark your answers down. However, if you choose to do so, it is suggested that you destroy the survey when this interview is complete. Do you have any questions? Are you ready to begin?

1. Which of these categories applies to you: In this mediation I was the
 Initiator (Plaintiff) Respondent (Defendant)

2. What gender was the other party in this mediation? Male Female

3. What type of mediation was this? Small claims Family/Divorce Other

4. Please indicate the nature of this dispute.
 money property personal relationship harassment employment
 dissatisfaction with product or services animal disturbance assault/battery
 disturbing the peace other (please specify) _____

5. Relationship of parties: **Please choose the one that best describes your relationship to the other party in this mediation:**

<input type="checkbox"/> Landlord/Tenant	<input type="checkbox"/> Consumer/Business	<input type="checkbox"/> Borrower/Creditor
<input type="checkbox"/> Employer/Employee	<input type="checkbox"/> Mates	<input type="checkbox"/> Victim/Offender
<input type="checkbox"/> Former Mates	<input type="checkbox"/> Friends	<input type="checkbox"/> Neighbors
<input type="checkbox"/> Acquaintances	<input type="checkbox"/> Co-workers	<input type="checkbox"/> Family
<input type="checkbox"/> Strangers	<input type="checkbox"/> Other (Please specify) _____	

6. How long had the conflict which brought you to mediation been going on?
 Days Weeks Months Years

(PLEASE TURN THE PAGE)

Directions: Thank you for participating in this valuable survey. To ensure complete confidentiality, please confine your answers only to the questions asked, without elaborating on any details of the mediation in question. *All of your responses will remain completely confidential.* Do you have any questions? Thank you again for participating. Are you ready to begin? Great!

7. In the mediation just completed I believe that an apology occurred.
 Strongly agree Agree Disagree Strongly disagree

Directions:

If you GAVE an apology GO TO SECTION B.

If you RECEIVED an apology GO TO SECTION C.

If you GAVE and RECEIVED an apology GO TO SECTION D.

If NO apology occurred GO TO SECTION E.

SECTION B: (If you gave an apology)

8. In the mediation just completed, I believe I **gave** an apology in regard to the issue which brought me to mediation.

Strongly agree Agree Disagree Strongly disagree

9. I believe the apology that occurred had a positive effect on the relationship I have with the other party. Strongly agree Agree Disagree Strongly disagree

10. I believe because an apology occurred it may have affected the outcome of the mediation.

Strongly agree Agree Disagree Strongly disagree

11. I believe the mediation was shortened because an apology occurred.

Strongly agree Agree Disagree Strongly disagree

12. I felt better about myself or (my self-esteem improved) because an apology occurred.

Strongly agree Agree Disagree Strongly disagree

13. An improved relationship with the other party is important to me.

Strongly agree Agree Disagree Strongly disagree

14. Because an apology occurred I believe that justice was better served than if it had not occurred.

Strongly agree Agree Disagree Strongly disagree

15. I believe the outcome of the mediation seemed more fair because an apology occurred.

Strongly agree Agree Disagree Strongly disagree

16. I was more satisfied with the mediation because an apology occurred.

Strongly agree Agree Disagree Strongly disagree

(PLEASE TURN THE PAGE)

SECTION C: (If you **received an apology)**

17. In the mediation just completed, I believe I **received** an apology in regard to the issue which brought me to mediation.
 Strongly agree Agree Disagree Strongly disagree
18. I believe the apology had a positive effect on the relationship I have with the other party.
 Strongly agree Agree Disagree Strongly disagree
19. I believe because an apology occurred it may have affected the outcome of the mediation.
 Strongly agree Agree Disagree Strongly disagree
20. I believe the mediation was shortened because an apology occurred.
 Strongly agree Agree Disagree Strongly disagree
21. I felt better about myself or (my self-esteem improved) because an apology occurred.
 Strongly agree Agree Disagree Strongly disagree
22. An improved relationship with the other party is important to me.
 Strongly agree Agree Disagree Strongly disagree
23. Because an apology occurred I believe that justice was better served than if it had not occurred.
 Strongly agree Agree Disagree Strongly disagree
24. I believe the outcome of the mediation seemed more fair because an apology occurred.
 Strongly agree Agree Disagree Strongly disagree
25. I was more satisfied with the mediation because an apology occurred.
 Strongly agree Agree Disagree Strongly disagree

SECTION D: (If you **gave and received an apology)**

26. In the mediation just completed, I believe I **gave AND received** an apology in regard to the issue which brought me to mediation.
 Strongly agree Agree Disagree Strongly disagree
27. I believe the apology had a positive effect on the relationship I have with the other party.
 Strongly agree Agree Disagree Strongly disagree
28. I believe because an apology occurred it may have affected the outcome of the mediation.
 Strongly agree Agree Disagree Strongly disagree
29. I believe the mediation was shortened because an apology occurred.
 Strongly agree Agree Disagree Strongly disagree

(PLEASE TURN THE PAGE)

30. I felt better about myself or (my self-esteem improved) because an apology occurred.
 Strongly agree Agree Disagree Strongly disagree
31. An improved relationship with the other party is important to me.
 Strongly agree Agree Disagree Strongly disagree
32. Because an apology occurred I believe that justice was better served than if it had not occurred.
 Strongly agree Agree Disagree Strongly disagree
33. I believe the outcome of the mediation seemed more fair because an apology occurred.
 Strongly agree Agree Disagree Strongly disagree
34. I was more satisfied with the mediation because an apology occurred.
 Strongly agree Agree Disagree Strongly disagree

SECTION E: (If NO apology occurred)

35. In the mediation just completed I believe no apology occurred.
 Strongly agree Agree Disagree Strongly disagree
36. I believe because no apology occurred it had a negative effect on the relationship have with the other party.
 Strongly agree Agree Disagree Strongly disagree
37. I believe if an apology had occurred it may have affected the outcome of the mediation.
 Strongly agree Agree Disagree Strongly disagree
38. I believe the mediation was lengthened because an apology did not occur.
 Strongly agree Agree Disagree Strongly disagree
39. I would have felt better about myself or (my self-esteem would have improved) if an apology had occurred.
 Strongly agree Agree Disagree Strongly disagree
40. An improved relationship with the other party is important to me.
 Strongly agree Agree Disagree Strongly disagree
41. I believe the outcome of the mediation might have seemed more fair if an apology had occurred.
 Strongly agree Agree Disagree Strongly disagree
42. I believe justice would have been better served if an apology had occurred.
 Strongly agree Agree Disagree Strongly disagree
43. I would have been more satisfied with the mediation if an apology had occurred.
 Strongly agree Agree Disagree Strongly disagree

(PLEASE GO TO SECTION H)

SECTION F: (If you GAVE an apology, complete questions 44-57).

0=Not at all 1=Somewhat 2=Quite a lot 3=Very much 4=Definitely

44. To what extent do you believe a misunderstanding/misdeed occurred concerning the issue which brought you to mediation? 0 1 2 3 4

45. To what extent do you believe you recognized/understood what the misunderstanding/misdeed was which brought you to mediation? 0 1 2 3 4

46. To what extent do you believe you took responsibility for the misunderstanding/misdeed which brought you to mediation? 0 1 2 3 4

47. How sincere (having regret) was your apology? 0 1 2 3 4

0=Not at all 1=Somewhat 2=Quite a lot 3=Very much 4=Definitely

48. How willing were you to make amends or reparations? 0 1 2 3 4

49. To what extent do you believe the apology served as amends or reparation for the issue which brought you to mediation? 0 1 2 3 4

50. How important was it for you to apologize? 0 1 2 3 4

51. To what extent do you believe you understood/acknowledged (validated) the other party's point of view concerning the issue which brought you to mediation? 0 1 2 3 4

52. To what extent did your self-esteem improve (or how much better did you feel about yourself) after giving the apology? 0 1 2 3 4

53. To what extent did you feel empowered (more self-reliant, in control, confident about solving future conflicts) after giving the apology? 0 1 2 3 4

54. To what extent do you feel the apology helped you get emotional closure to the issue which brought you to mediation? 0 1 2 3 4

55. To what extent do you feel that justice was served? 0 1 2 3 4

56. To what extent do you believe the outcome of the mediation was fair? 0 1 2 3 4

57. How satisfied were you with the overall mediation process? 0 1 2 3 4

(PLEASE GO TO SECTION H)***(PLEASE TURN THE PAGE)***

SECTION G: (If you RECEIVED an apology answer questions 58-71.)

0=Not at all 1=Somewhat 2=Quite a lot 3=Very much 4=Definitely

58. To what extent do you believe a misunderstanding/misdeed occurred concerning the issue which brought you to mediation? 0 1 2 3 4
59. To what extent do you believe the other party recognized/understood what the misunderstanding/misdeed was which brought you to mediation? 0 1 2 3 4
60. To what extent do you believe the other party took responsibility for the misunderstanding/misdeed which brought you to mediation? 0 1 2 3 4
61. How sincere (having regret) do you believe their apology was? 0 1 2 3 4
62. How necessary was it for amends or reparations to be made for the issue which brought you to mediation? 0 1 2 3 4
63. To what extent would the apology itself have served as amends or reparation for the issue which brought you to mediation? 0 1 2 3 4
64. How important was it for the other party to apologize? 0 1 2 3 4
65. To what extent do you believe the other party understood and acknowledged (or validated) your point of view concerning the issue which brought you to mediation? 0 1 2 3 4
66. To what extent did you feel your self-esteem improved or (how much better did you feel about yourself) after the apology occurred? 0 1 2 3 4
67. To what extent did you feel empowered (more self-reliant, in control, confident about solving future conflicts) after receiving the apology? 0 1 2 3 4
68. To what extent do you believe the apology helped you get emotional closure to the issue which brought you to mediation? 0 1 2 3 4
69. To what extent do you feel justice was served? 0 1 2 3 4
70. To what extent do you believe the outcome of the mediation was fair? 0 1 2 3 4
71. How satisfied were you with the overall mediation process? 0 1 2 3 4

(PLEASE TURN THE PAGE)

SECTION H: For all interviewees

72. What is your gender? Male Female
73. What is your age? 18-25 26-33 34-41 42-49 50-57 58-65 66+
74. What is the highest level of education you have achieved?
 Some High School High School graduate Technical Some college
 College graduate Graduate degree Other (please specify) _____
75. How likely are you to pursue further litigation for this issue?
 Very likely Somewhat likely Not likely Will not pursue
76. Did you consult an attorney about this mediation? Yes No
77. Was an attorney present during this mediation? Yes No
78. Would you use mediation again in the future? Yes No

Contact numbers: Kay Miller, Researcher (405) 880-6624
Dr. Kay S. Bull, Doctoral Committee Chair (405) 744-9444
Dr. Carol Olson, Institutional Review Board (405) 744-5700

Appendix I

Institutional Review Board Approval

**Oklahoma State University
Institutional Review Board**

Protocol Expires: 6/10/2004

Date: Wednesday, June 11, 2003

IRB Application No ED03136

Proposal Title: INVESTIGATION OF THE PERCEPTION OF APOLOGY ON MEDIATION OUTCOMES
AS ASSESSED IN THE POPULATION OF EARLY SETTLEMENT COURT AND OTHER-
REFERRED CASES

Principal
Investigator(s):

Kay Miller
2402 N. Glenwood
Stillwater, OK 74078

Steven Harrist
426 Willard
Stillwater, OK 74078

Kay Bull
419 Willard
Stillwater, OK 74078

Reviewed and
Processed as: Exempt

Approval Status Recommended by Reviewer(s): Approved

Dear PI :

Your IRB application referenced above has been approved for one calendar year. Please make note of the expiration date indicated above. It is the judgment of the reviewers that the rights and welfare of individuals who may be asked to participate in this study will be respected, and that the research will be conducted in a manner consistent with the IRB requirements as outlined in section 45 CFR 46.

As Principal Investigator, it is your responsibility to do the following:

1. Conduct this study exactly as it has been approved. Any modifications to the research protocol must be submitted with the appropriate signatures for IRB approval.
2. Submit a request for continuation if the study extends beyond the approval period of one calendar year. This continuation must receive IRB review and approval before the research can continue.
3. Report any adverse events to the IRB Chair promptly. Adverse events are those which are unanticipated and impact the subjects during the course of this research; and
4. Notify the IRB office in writing when your research project is complete.

Please note that approved projects are subject to monitoring by the IRB. If you have questions about the IRB procedures or need any assistance from the Board, please contact Sharon Bacher, the Executive Secretary to the IRB, in 415 Whitehurst (phone: 405-744-5700, sbacher@okstate.edu).

Sincerely,



Carol Olson, Chair
Institutional Review Board

Appendix J

Rule 10-Rules and Procedures for the Dispute Resolution Act

**ALTERNATIVE DISPUTE RESOLUTION SYSTEM
RULES OF CONDUCT FOR OUTSIDE PARTIES
ATTENDING MEDIATION HEARING**

**Rule 10 - Rules and Procedures for the
Dispute Resolution Act**

Case No.: _____ Date: _____

Style: _____

- A. All persons attending a mediation session shall respect and maintain the total confidentiality of the session. (See Backside of this form for clarity on confidentiality.)
- B. When one party in a mediation session requests an assisting party, the following rules must be outlined and agreed to by the assisting party prior to initiating the mediation session:
 - 1. An assisting party may advise only his/her client. The assisting party shall speak only with the mediator or his/her client and cannot interrogate the opposing party during the mediation session.
 - 2. The party without an assisting person present must consent to allowing the other person's assisting party in the mediation session, or be given an opportunity to secure his/her own assisting party to be present during the mediation session.
 - 3. If a party who is without an assisting party refuses to participate in mediation due to the presence of another's assisting party, no mediation session will be conducted.
- C. If a party requests a non-assisting friend or relative to attend the session, attendance shall be allowed only if agreed upon in advance by the other party and is not in violation with program policy. The person may then be in the room but in no way may interrupt, or interfere with proceedings. Such a person shall not be heard nor allowed to display distracting behavior.
- D. If the mediating parties agree, a neutral third party may serve as a resource person for the mediator and the parties. Such a person shall participate only on request and must remain impartial.
- E. Mediation sessions shall not be filmed, taped, or otherwise recorded.

Confidentiality of Proceedings Information (on back)

(Side 2)
Rule 10
Rules of Conduct for Outside Parties
Attending Mediation Hearing

Confidentiality of Proceedings

- A. Any information received by a mediator or a person employed to assist a mediator, through files, reports, interviews, memoranda, case summaries, or notes and work products of the mediator, is privileged and confidential.
- B. No part of the proceedings shall be considered a matter of public record.
- C. No mediator, initiating party, or responding party in a mediation proceeding shall be subject to administrative or judicial process requiring disclosure of any matters discussed or shall disclose any information obtained during any part of the mediation proceeding.
- D. Each mediation session shall be informal. No adjudication sanction or penalty may be made or imposed by the mediator or the program.
- E. No mediator, employee, or agent of a mediator shall be liable for civil damages for any statement or decision made in the process of mediating or settling a dispute unless the action of such person was a result of gross negligence with malicious purpose or in a manner exhibiting a willful disregard of the rights, safety, or property of any party to the mediation.
- F. If a party who has participated in mediation brings an action for damages against a mediator arising out of mediation, for purposes of that action the privilege provided for in subsection A of this section shall be deemed to be waived as to the party bringing the action.

I acknowledge that I have read and understand O.S. Title 12 § 1805, and Rule 10, "Rules of Conduct for Outside Parties Attending Mediation Hearing."

Signed: _____ Dated: _____

Role: _____

Signed: _____ Dated: _____

Role: _____

Signed: _____ Dated: _____

Role: _____

Signed: _____ Dated: _____

Role: _____

Signed: _____ Dated: _____

Role: _____

Rule 10-- Rules and Procedures for the Dispute Resolution Act

Item A: “Any information received by a mediator or a person employed to assist a mediator, through files, reports, interviews, memoranda, case summaries, or notes and work products of the mediator, is privileged and confidential.”

Item B: “No part of the proceedings shall be considered a matter of public record.”

Item C: “No mediator, initiating party, or responding party in a mediation proceeding shall be subject to administrative or judicial process requiring disclosure of any matters discussed or shall disclose any information obtained during any part of the mediation proceeding.”

Appendix K

State Statute 1805 – Confidentiality of Proceedings-Disclosure-Civil

Liability Waiver of Privilege

SUPREME COURT OF OKLAHOMA
MEDIATION TRAINING & RESOURCE MANUAL**Consent to Mediate****§1804. Written consent to dispute resolution proceedings**

- A. Prior to commencement of any dispute resolution proceedings, the disputing parties shall enter into a written consent which specifies the method by which the parties shall attempt to resolve the issues in dispute.
- B. The written consent shall be in a form prescribed by the Administrative Director of the Courts and shall include the following:
 - 1. The rights and obligations of all parties pursuant to the provisions of the Dispute Resolution Act;¹ and
 - 2. The confidentiality of the proceedings.
- C. If the parties agree to have the resolution reduced to written form, a copy shall be provided to the parties.

Laws 1983, c. 78, § 4, operative July 1, 1983.

Confidentiality**§ 1805. Confidentiality of proceedings-Disclosure-Civil liability-Waiver of privilege**

- A. Any information received by a mediator or a person employed to assist a mediator, through files, reports, interviews, memoranda, case summaries, or notes and work products of the mediator, is privileged and confidential.
- B. No part of the proceeding shall be considered a matter of public record.
- C. No mediator, initiating party, or responding party in a mediation proceeding shall be subject to administrative or judicial process requiring disclosure of any matters discussed or shall disclose any information obtained during any part of the mediation proceedings.
- D. Each mediation session shall be informal. No adjudication sanction or penalty may be made or imposed by the mediator or the program.
- E. No mediator, employee, or agent of a mediator shall be held liable for civil damages for any statement or decision made in the process of

VITA

①

Sharon Kay Miller

Candidate for the Degree of

Doctor of Philosophy

Thesis: INVESTIGATION OF THE PERCEPTION OF APOLOGY ON MEDIATION
OUTCOMES AS ASSESSED IN A POPULATION OF EARLY
SETTLEMENT, COURT AND OTHER-REFERRED CASES

Major Field: Educational Psychology

Biographical:

Education: Graduated from Harlingen High School, Harlingen, Texas in May, 1974; received a Bachelor of Arts degree in Oral Communications/Radio-Television from Baylor University, Waco, Texas in August, 1979; received a Master of Human Relations degree with Honors from University of Oklahoma in July, 1995. Completed the requirements for the Doctor of Philosophy in Educational Psychology with an emphasis on conflict resolution, at Oklahoma State University in May, 2004.

Experience: Geropsychiatric Therapist, Good Shepherd Behavioral Health, Oklahoma City, Oklahoma, 2001-2002; Private Practice, Licensed Professional Counselor, Stillwater, Oklahoma, 1998-2001; Employee Assistance Provider, Focus Institute, Stillwater, Oklahoma, 2000-2001; Student Conduct Assistant, Oklahoma State University Office of Student Conduct, Stillwater, Oklahoma, 1999-2001; Intensive Outpatient Counselor, 12 & 12 Substance Abuse Treatment Center, Tulsa, Oklahoma, 1996-1998; Mentor, Youth Services of Tulsa, Tulsa, Oklahoma, 1995-1996; Cross-Cultural Tutor and Image Consultant, Image Concepts, Inc., Tulsa, Oklahoma and Waco, Texas, 1991-1995; Senior Sales Director, Mary Kay, Inc., Dallas, Texas, 1979-1991; Air Personality, KWTX Broadcasting, Waco, Texas, 1977-1979; News Director and On-Air Host of Classical Treasury, KWBU Broadcasting, Waco, Texas, 1976-1979.

Professional Memberships: American Mental Health Counselor's Association, Society of Professionals in Dispute Resolution, Association for Conflict Resolution, Kappa Delta Pi Honor Society, Certified Family and Divorce Mediator, State of Oklahoma; Certified Parent/Teen Mediator, State of Oklahoma; Certified IDEA Mediator, State of Oklahoma.