EXHIBIT 6
DATE 2/11/05
HB 391

OBSERVATIONS - MEDIATION IN A HOMICIDE CASE

Judge Carlson asked that I mediate a homicide case that was set for trial within a few weeks of the scheduled mediation. This was my first experience in mediating a criminal case and according to counsel for both sides the process was of some benefit in the ultimate resolution of the case via a plea agreement prior to trial.

PRE-MEDIATION

PRESIDING JUDGE:

- Judge Carlson and I conversed about the case briefly before the mediation and he advised me regarding plea agreements he could reasonably entertain for sentencing purposes.
- Judge Carlson also advised that counsel for each party had agreed to participate in the mediation process.

ATTORNEYS:

- Contact made with each attorney by letter and telephone to discuss the parameters of the mediation process and their expectations in connection with that process.
- Both counsel were advised that any information they furnished in connection with the mediation would be held in strict confidence and only disclosed with prior written authorization from the party providing the information.
- Each counsel was asked to provide a candid assessment of the strengths and weaknesses of their own case and that of their opponent's, the likely outcome following a jury trial, and the probable sentence defendant could reasonably expect if convicted under any reasonable scenario.
- Each counsel disclosed the evidence they would rely on in establishing their case, discussed evidentiary problems and the ruling reasonably expected thereon.
- Finally, both attorneys disclosed their candid view of plea bargain discussions, perceptions of the impediments that had frustrated an agreement and the parameters of an acceptable plea agreement. (What was "driving" the case to trial.)
- (I would also insure that the "victim(s)" of the charged offense have been contacted by the prosecutor regarding mediation and are prepared and willing to participate in mediation.)

MEDIATOR:

- Conscientiously reviewed all information submitted by counsel with special attention to disputed and undisputed facts as provided by counsel.
- Refresher course on the law related to the facts and reasonable jury verdict options on the facts disclosed.
- Candidly discussed with counsel any unanswered questions or concerns prior to mediation such as political fallout, personality disputes, client control or other unstated problems that may interfere with reaching a plea agreement.

MEDIATION

VICTIMS:

- Met with victims, victim's assistance coordinator and prosecuting attorney to answer questions, explain the process and the mediator's role in a criminal mediation. In that regard, my primary concern was to allay fears the victims may have that mediation is merely the legal equivalent of "lets make a deal" engaged in just to protect the defendant's rights at the expense of the victim's, save court expense, and avoid a trial.

- Explained the trial process including the role of judge, prosecutor, defense counsel and jurors. Also explained that mediation may be the best opportunity for them to be more than mere spectators before the prosecutor, defense attorney, jury and judge begin the process of reaching a verdict at trial. (In my view mediation allows victims an opportunity to have some direct input in or impact on any plea that may be entered.)

- Advised the victims that there are generally at least two versions of any incident, that the prosecution must prove it's version beyond a reasonable doubt if she is to be convicted, and that absent a plea agreement an unbiased jury will make the final determination on that issue.

- Cautiously ascertain efficacy of or desire for a brief meeting between the state and the victims and the defendant and counsel and what may or may not be accomplished in that meeting. This may allow victims to express how defendant's actions have impacted their life and provides an opportunity to "humanize" the defendant in the victim's eyes. (In this case the victims were initially reluctant but during the process decided they would participate if they did not have to look at the defendant but could voice to her how the incident had impacted their lives. In this case I believe it was beneficial to the victims and the defendant although the victim's assistance coordinator was not in agreement.)

- The victims asked for my assessment of possible verdicts based on the evidence I was aware of on both sides. With prior approval from the prosecution I advised them of the parameters of verdicts that I believed were reasonable depending on the jury's ultimate determination of certain disputed facts.

DEFENDANT:

- I explained my role in this criminal mediation and the confidentiality inherent in that role.

- The defendant had the opportunity to confidentially express her version of the incident, and her fears and concerns to an informed third party with no stake in the final resolution of the case. This also provided a "reality check" where "hard" questions could be asked allowing the defendant an opportunity to test the reality of her position

- Understood that she would ultimately be sentenced on any plea agreement and, therefore, was the only one that could make any decision in that regard after being fully advised the various alternatives reasonably available under the law.

- Also reviewed the role of the prosecutor, defense attorney, judge and jury in the criminal prosecution that she was facing.

- (In this case the defendant also asked for my view of probable verdicts based on the evidence provided by both sides. With her counsel's approval, (having discussed that possibility with him prior to mediation) I candidly gave her the parameters of the verdicts I believed the jury could reasonably return depending on their ultimate determination of certain disputed facts.)

CONCLUSION

The case was not resolved at the conclusion of the mediation but I later learned that defendant entered a plea just prior to trial. I believe mediation has a place in certain criminal cases, and can give the victims an opportunity to participate in and "own" the process by which the case is finally resolved. It may also provide independent validation of the advice given by well-prepared prosecutors and defense counsel to victims and defendants respectively.