Mediation by Any Other Name Would Smell as Sweet—or Would It? The Struggle to Define Mediation and Its Various Approaches

LORIG CHARKOUDIAN
CRISTIAN DE RITIS
RAMONA BUCK
CARRIE L. WILSON

This article reports on two studies. The analysis of the first study, a survey of 250 mediators, finds four distinct groups of mediator "clusters," based on self-reported strategies. These four clusters are described in detail and mediators' self-defined labels are then correlated with the four clusters. There is little consistency between the labels mediators give their approach and the cluster into which they actually fall in this survey. The analysis of the second study, which involved observation and coding of actual mediations, finds that those mediators who were observed to use any directive strategies tended to use mostly directive strategies and those mediators who were observed to use any elicitive strategies tended to use mostly elicitive strategies throughout the observed mediation case. This challenges the notion that mediators may use both directive and elicitive strategies together in the same mediation.

As the popularity of mediation grows, the tension between wishing to promote quality assurance and allowing innovation increases. Attempts to ensure quality without defining mediation have not succeeded, and attempts to define mediation beyond a few key phrases have met with objections, including concerns about stifling creativity. One response to this problem has been to define various approaches to mediation differently. Some have used

NOTE: *The authors would like to thank Lou Gieszl for his comments in the development of this article.*

the terms *transformative, facilitative,* and *evaluative* (Riskin, 1994; Bush and Folger, 1994). Although transformative mediation, one of the newer mediation styles to be coined, may have a clearer definition than the others, the actual strategies used by people calling themselves transformative mediators vary widely. Many mediators may define themselves as facilitative, but the actual process used may vary significantly (Jonathan Rosenthal, executive director of the Maryland District Court ADR Program, letter to author, March 2003). This state of affairs may not be a problem to individual mediators. However, it can leave the public confused and make it difficult for organizations or government entities to carry out oversight.

The two studies in this article respond to this definitional challenge in an original way. The first is a survey in which mediators self-identify the strategies they use, and their answers are clustered on the basis of statistically significant groupings. This study is unique because clusters were determined inductively from survey responses rather than by asking mediators to group themselves by mediation approach. The second involves observations of actual mediations and coding of mediator behaviors used in these mediations. A correlation table examines the relationships among behaviors that tend to be used together and those that tend not to be used together. The resulting analyses are discussed, and they raise further questions about attempts to define mediation and its various approaches.

Literature Review

The question of classifying mediator approach or style has been taken on by a number of authors in several ways over the last twenty years. Some (Riskin, 1994; Hensler, 2000; Bush and Folger, 1994, Kressel, 2007) write theoretically about approach, while others (Picard, 2004; Herrman, Hollett, Eaker, and Gale, 2003) use survey methodology. It is important to note that the authors cited in this literature review use different vocabulary in discussing ways to categorize approaches to mediation. This makes it difficult to compare and contrast the authors' findings, but it reinforces the point we make in this article that there is no universal agreement on the language used to describe mediation.

In what has become an important paper in the discourse on mediation approach, Riskin (1994) highlights the danger of ambiguity in the definition of mediation in mediator quality assurance and participant selection of mediators. Riskin creates a spectrum with facilitative versus evaluative on one axis and broad versus narrow on the other axis. According to Riskin,

evaluative mediators believe participants want or need direction and expertise from the mediator, while facilitative mediators believe the participants need assistance in gaining clarity and building communication. Mediators with a broad orientation see their role as expanding the conversation to a wider frame of the presenting conflict, while those with a narrow orientation believe their role is to focus on the problem that brought participants to mediation. This grid then creates four approaches: evaluative-narrow, facilitative-narrow, evaluative-broad, and facilitative-broad. Riskin claims that most mediators use primarily one approach, although many borrow strategies from other approaches. However, he writes, "speaking generally, evaluative mediators are more willing to facilitate than facilitative mediators are to evaluate. However, many evaluative mediators lack facilitation skills" (p. 114). Riskin's theories are based on his assessment of mediators' beliefs about what is needed by people in conflict.

In another analysis based on this classic distinction, Hensler (2000) describes and explores the debate between evaluative and facilitative mediation. She describes evaluative mediation as "bargaining in the shadow of the law" and focuses on the distributive nature of conflict and compromise-based solutions. She describes facilitative mediation as interest-based negotiation with the goal of a win-win solution. To examine these issues in practice, Hensler looks at six studies involving observations and surveys of mediators mediating in the context of civil litigation. She regards as facilitative the "interest-based negotiation approach, assigning value to party participation, communication and relationships, and assigning value to process as well as outcomes," and, conversely, "adopting a distributive-oriented negotiation process, assigning priority to attorney participation and communication, and (especially) assigning priority to settlement" she regards as evaluative (p. 239).

The discussion and literature about mediation approach had fallen into classifications of facilitative versus evaluative, or versions thereof, until the *Promise of Mediation* defined both as "problem-solving" and presented transformative mediation as an alternative. Bush and Folger (1994) claim that the transformative mediation approach creates an opportunity to transform people's conflict interaction. The authors outline an approach that is based on mediators intervening only as needed to support empowerment and recognition shifts, as opposed to focusing on whether or not an agreement is reached in mediation.

In response to articles such as those cited here, Picard (2004) argues against a dichotomous view of mediation put forth by others, such as facilitative

versus evaluative or problem-solving versus transformative. Using a survey of experienced mediators and trainers, Picard codes the responses and identifies three patterns of mediation: pragmatic, socioemotional, and mixed. Pragmatic mediators are "task focused and problem-oriented," associating with such terms as "settlement, evaluative, and directive" (pp. 302–303). The socioemotional mediators associate with terms such as "humanistic, transformative, and relational" and "are more focused on the people more than on the problem at hand" (pp. 303–304). Picard describes a mixed mediator as "someone who describes his or her work using pragmatic and socioemotional descriptors interchangeably, suggesting that they have a more pluralistic vision of mediation than those who repeatedly use the same constructs to define their work" (p. 304). She highlights that the mixed pattern is quite prevalent (more than 54 percent of respondents) and makes the point that the mixed approach should not be viewed as a continuum but rather as a set of skills from which the mediator may use any combination.

In discussing the implications for the field, Picard claims that "the findings suggest something other than what Bush and Folger (1994) believe—if a mediator follows one set of goals, he or she cannot follow another. Whatever might be said about their actual mediation behaviors, in their minds at least respondents appear to be diversified in their approach to mediation" (p. 308). In contrast, however, Kressel (2000) writes that mediators do "tend to enact the same style from case to case, despite variety in issues and dynamics" (p. 535). So this brings us to the important questions for this study: (1) What do mediators say they do (meaning self-reported behaviors)? (2) What do they actually do (meaning observed behaviors)?

Herrman, Hollet, Eaker, and Gale (2003) use another survey approach to correlate mediators' orientations with their demographics. Their survey asks mediators to reflect on their goal, the focus of the mediation, their strength, the signals that mediation is working, and the most important outcome. The authors note that "existing research on the mediation of interpersonal disputes lacks quantifiable definitions of orientation" and that "the definitive study on mediator orientations has yet to be developed." Their article takes some steps in this direction by asking mediators about their general philosophy and focus. We hope that our study is a second step moving this conversation forward and expanding its scope to include specific actions taken in real mediations.

The literature cited here and existing discourse about mediation lead one to believe that there are clearly distinguishable approaches to

mediation and that these approaches are distinct from one another. Our first study finds that this is indeed the case. Although each individual article implies that the distinction among the approaches can be named, the literature also clearly lacks consensus on what to name the various approaches and how the distinction among the approaches should be delineated. This study finds that this same confusion is borne out among practitioners, who do not use the same names to define the same types of mediation and who use the same names to define different approaches to mediation.

The Two Studies

This article uses data from two separate studies that began with differing aims. However, the results of these two studies are particularly interesting when compared. The first is a survey completed by nearly 250 mediators from a variety of settings in Maryland through the work of the Maryland Mediation and Conflict Resolution Office's Mediator Quality Assurance Committee. The second is a portion of the dataset collected through a multiyear research project that involved observing real mediations while coding mediator and participant behaviors on handheld computers. This second study was conducted by Community Mediation Maryland through a grant from the William and Flora Hewlett Foundation. The discussion section compares and contrasts the findings of these two studies and discusses implications for the field.

In the discussion of the first study, the term *strategies* is used to describe the things that mediators claim they do in the mediation process. This term is used because it refers to things mediators say they do when they are thinking about their practice. In the second study, the term *behavior* is used to describe what mediators are seen doing. The word *behavior* is used both because it refers to what mediators are actually seen doing and because the tool used to gather the data is behavior coding methodology.

Study 1: Survey Data

Survey Methodology

The Maryland Mediation and Conflict Resolution Office undertook a collaborative process involving practitioners and users from around the state to develop a statewide mediator excellence program. Ten task groups

were formed to focus on aspects of this project. One of the task groups that were part of this effort was the Definitions Task Group. This group had the goal of defining the various practices of mediation common in Maryland today.

To accomplish this task, a seventy-six-item survey was designed. (The full survey is available on request from the author at littlquail@ aol.com.) The survey included sixty-three questions asking mediators to indicate if they use particular strategies "often," "sometimes," "occasionally," "unlikely," or "never." Each strategy was written as specifically as possible and included examples to avoid confusion from differing understandings of mediator terms. The survey also included ten questions that asked mediators to check as many responses as they would use in response to a particular situation that might arise in mediation. One question asked mediators to assign points to various goals for the mediation:

> 75. Out of a total of 100 points, how many points would you assign each of the following goals of your mediation?
>
> - Participants reach an agreement in mediation. ___
> - Participants gain clarity about their own needs and choices. ___
> - Participants gain an understanding of each other. ___
> - Participants control the outcome of the mediation. ___
> - Participants increase their ability to resolve future conflicts. ___

The final question was intentionally open-ended: "What approach to mediation do you use?" The answers ranged from traditional mediation labels (transformative, facilitative, directive) to expository descriptions of approach, to commentary on the survey itself. The survey also included a separate form for demographics, and questions about mediator training, experience, and context of mediations.

The survey was sent to about 400 mediators around Maryland in the summer of 2004. About 190 forms were returned. A second round of the survey was sent out in December 2004. In this second round, about 60 forms were returned, for a grand total of 249 completed survey forms. Twenty-two of the returned surveys were not usable because respondents had completed very few of the questions.

A cluster analysis was done on the survey data using two approaches: (1) a tree/self-determined clustering approach and (2) a constrained optimal approach. Cluster analysis is a statistical technique that groups observations

together on the basis of similarities of variables or characteristics. More details on this methodology can be found in the Appendix.

Survey Results

The results of both the tree/self-determined clustering approach and the constrained optimal approach gleaned four statistically significant clusters, meaning that within each cluster mediators did similar kinds of things to form a particular approach to mediation. In addition, there were several strategies that all mediation clusters had in common.

There were several mediator strategies reported as being used "often" or "sometimes" (or "unlikely" or "never") by the mediators in all four clusters. These strategies are labeled as "common" strategies, meaning they are strategies common to all clusters. Here is a summary of these common strategies:

- Most mediator respondents indicated that when they describe the process of mediation to the participants they:
  - Give a process overview at the beginning of the mediation
  - Allow the process to change, as needed, to serve the needs of the participants
  - Are likely to state that the goal of mediation is to discuss the issues and to see if the participants can come to an agreement
  - Mention the possibility of caucusing
- Most mediator respondents indicated that during the mediation they:
  - Use open-ended questions or requests seeking information, issues, or personal experiences
  - Use questions or statements to determine underlying values or interests
  - Summarize or paraphrase information, facts, or issues already mentioned by the participants, and check for accuracy after paraphrasing
  - Summarize or paraphrase feelings already mentioned by the participants
  - Check out possible feelings of the participants, according to what the participants have implied
  - Restate issues without taking sides

    - Help the participants understand each other by noting commonalities behind the participants' concerns and clarifying where disagreement lies
    - Ask the participants what solutions might meet all the participants' needs
    - Encourage the participants to think of many options and use brainstorming at times
- Most mediator respondents indicate that if participants are considering ending the mediation the mediators:
    - May ask the participants about what the alternatives are to a mediated agreement
    - May ask questions to clarify their motivation to terminate
    - Would not tell participants that they may be in contempt of court if they do not go forward with the mediation
    - Would not tell participants that the judge will be disappointed if they do not mediate
- Most mediator respondents indicate that they would use a caucus:
    - In response to a request from a participant for a caucus
    - In response to impasse

In addition to the common set of mediator strategies described here, there were four distinct clusters of mediator strategies, which we call clusters A, B, C, and D. Mediators in cluster A focus the most on reaching agreement, and the mediators in this cluster are the most likely to give direction and suggestions, both regarding the process and regarding the outcome. They are most likely to use caucuses and follow predetermined steps in mediation. Mediators in cluster D are at the opposite end of the spectrum, focusing on supporting the participants to control the outcome of mediation. The mediators in this cluster are most likely to use only the strategies already described in the common cluster of strategies and would be least likely to give direction or suggestions. Mediators in clusters B and C are in between those in clusters A and D and use some of the strategies of each. Table 1 outlines distinctions among the four statistically significant clusters. It is important to note that all of these strategies are self-reported by the survey respondents and not verified by observation.

Finally, it is interesting to compare the spectrums to the approach mediators declare themselves to have used. The final survey question was

Table 1. Comparison of the Four Statistically Significant Clusters Resulting from Mediator Survey

	Cluster A	*Cluster B*	*Cluster C*	*Cluster D*
Goal of mediation process	Reaching agreement twice as important as any other goal	Reaching agreement is most important; participant control is distant second	Equal weight on reaching agreement and participant control	Participant control most important; reaching agreement half as important
Response to shouting match or control of participant communication	Mediator would interrupt shouting match and redirect	Mediator would interrupt shouting match and redirect	Mediator would respond to shouting match by interrupting and reframing in terms of issues	Mediator responds to shouting match by letting participants finish and then reflecting back
Determination of issues for discussion	Mediator steers away from "unrelated" issues; may introduce new issues	Mediator steers away from "unrelated" issues	Mediator steers away from "unrelated" issues	Participants can discuss any issue they want; nothing considered "unrelated"
Interpreting statements of one participant to other	Mediator interprets or explains one participant's comments to the other	Mediator interprets or explains one participant's comments to the other	Might ask participants questions to consider alternative explanations of other's actions	Would not interpret one participant's comments to another
Commenting on participants' proposals	Mediator likely to suggest that one participant give something up to get something; mediator likely to highlight a problem with participants' proposed solutions	May encourage one participant to go along with another's proposal in a caucus	May encourage one participant to go along with another's proposal in a caucus	Would not comment on proposals

(*Continued*)

Table 1. (*Continued*)

	Cluster A	*Cluster B*	*Cluster C*	*Cluster D*
Mediator suggestions	Mediator likely to make suggestions or steer toward particular outcome	Mediator may make suggestion without pushing the idea; would only make proposal if participants are stuck or ask for help	Mediators would not give advice or suggestions, even if asked	Mediators would not give advice or suggestions, even if asked
Pressure for agreement	Mediator strongly encourages agreement, indicating consequences of not reaching agreement; focus and pressure on staying in mediation	If participants wish to terminate, mediator reminds them that process is voluntary	If participants wish to terminate, mediator reminds them that process is voluntary	If participants wish to terminate, mediator reminds them that process is voluntary
Use of ground rules	Mediator sets ground rules at beginning and enforces throughout	Mediator sets ground rules at beginning and enforces throughout	Mediator sets ground rules at beginning and enforces throughout	Mediator does not set ground rules
Use of caucus	Mediator uses caucus frequently for multiple reasons	Mediator uses caucus to flesh out issues	Mediator uses caucus to flesh out issues or determine if mediation needs to be stopped	Mediator uses caucus if suspects fear of retaliation
Focus of conversation	Mediator focuses conversation on future	Mediator focuses conversation on future	Mediator focuses conversation on future	Participants maintain control of dialogue and what to focus on
Mediator analysis of relationship	Mediator may point out possible reason for the conflict	Mediator might give own opinion of dynamic of relationship	Mediator would not comment on dynamics of relationship	Mediator would not comment on dynamics of relationship

the open-ended qualitative question, "What mediation approach do you use?" The question was purposely left open-ended without defining what was meant by approach, without giving examples, and without defining the concept of approach. This allowed people to define what they do as they might define it to the general public, a client, or a roster manager. Some people answered with traditional titles such as facilitative or transformative. Some responded that they used a mix of various approaches. These were coded as "mixed." Others answered with a narrative about their philosophy. Half of the answers could be coded as community, directive, mixed, facilitative, transformative, and transformative/facilitative. (Note that although "community" has often been considered a venue rather than an "approach," the relative frequency with which it appeared as an answer to this question led the authors to code it for this study.) Slightly fewer than half of the responses could not be categorized, either because the respondents did not answer the question or because they answered with a lengthy philosophical statement that the authors did not feel could be clearly coded. Table 2 correlates the label the mediators gave themselves with the cluster into which their answers fell. For example, two people who defined their approach as "community" fell into cluster A, and six people defining their approach with the same term fell into cluster D. One person who called himself or herself "transformative" fell into cluster A, two who called themselves "transformative" fell into cluster B, 3 who called themselves "transformative" fell into cluster C, and eight who used the term fell into cluster D.

It is interesting to note that in each cluster of mediators as determined by the survey mediators did not self-identify with just one mediation approach, but rather with at least four approaches. This table shows that there is not clear agreement among mediators associating a name with a set of behaviors practiced. This contradicts individual authors' claims to a clear and nameable distinction among approaches, but it is consistent with the general disagreement among authors as to how to differentiate and name the range of approaches practiced by mediators.

The survey study may lead to cautious optimism that one could define mediation according to the common cluster of mediator strategies or that one could define mediation according to the four clusters. However, the observation study described in the next section challenges that possibility. We return to the discussion of this study after describing the findings from the observation study.

Table 2. A Comparison of Self-Identified Mediation Approaches with Actual Survey Clusters

Statistically Identified Cluster from Survey Response	*Community*	*Directive*	*Facilitative*	*Mixed*	*Transformative*	*Transformative/ Facilitative*	*Missing/ Philosophical Statement*	*Total*
A	2	2	1	7	1	1	29	43
B	0	2	12	14	2	4	35	69
C	0	0	22	9	3	9	23	66
D	6	0	15	2	8	5	13	49
Total	8	4	50	32	14	19	100	227

Study 2: Observation Data

Observation Methodology

The database for this study was developed as part of a larger study coordinated by Community Mediation Maryland, formerly the Maryland Association of Community Mediation Centers (MACMC). Lead author Lorig Charkoudian designed the research, initially serving as director of research and training and then later serving as executive director of Community Mediation Maryland. The MACMC Research Committee, made up of representatives from community mediation programs in Maryland, oversaw and assisted in the research design. In addition, a Research Advisory Board of leading conflict resolution researchers from across the country reviewed materials and offered guidance.

Community mediation programs and day-of-trial programs in Maryland, Pennsylvania, Delaware, New York, Washington, D.C., Northern Virginia, and New York, as well as a mediation program in a Maryland prosecutor's office, furnished cases for observation for this research. In those participating programs, intake staff asked clients who had decided to use mediation if they were willing to have observers present. In seventy observed cases, researchers interviewed the clients using a brief questionnaire immediately before and immediately after their mediation sessions.

There were two MACMC researcher-observers assigned to each case. Using behavior-coding methodology, one researcher coded all of the participants' activities and one coded all of the mediator activities. (Intercoder reliability was used in training to test and refine the codes but was irrelevant within each mediation observation because one observer coded only mediators' behaviors and the other coded only participants' behaviors.) Codes were entered into handheld computers. An activity was coded every time it appeared in each speaking turn. If a speaking turn lasted for more than thirty seconds and the subject used the same activity, then it was coded again.

The data from this study are being used for a number of analyses. For the purpose of this article, we are examining the correlation between all of the mediator behaviors to understand which mediator behaviors are likely to occur with which others and which are not. Table 3 shows the variables examined and the summary statistics for the variables. The table is based on the seventy observed cases.

Table 3. Variables, Definitions, and Summary Statistics for Observation Study

Mediator Behaviors	*Definitions*	*Mean*	*SD*	*Minimum*	*Maximum*
Bigger picture	Number of times per mediation that mediators summarize what was said or asked open-ended question	41.82	22.74	10.00	114.00
Fact	Number of times per mediation that mediator ask closed question or question to establish a fact	16.43	14.49	0.00	81.00
Interest/value	Number of times per mediation that mediators reflect or ask to get to underlying value or interest	5.29	7.39	0.00	30.00
Neutral issue	Number of times per mediation that mediators articulate issue using neutral language	5.30	7.07	0.00	29.00
Feeling	Number of times per mediation that mediators reflect back feeling expressed (but not necessarily articulated) by participant	5.66	8.09	0.00	38.00
Common ground	Number of times per mediation that mediators point out common ground among participants	1.55	1.92	0.00	7.00
Explain	Number of times per mediation that mediators explain one participant's position to the other	1.66	2.63	0.00	11.00
Opinion	Number of times per mediation that mediators express their opinion about the situation	9.21	10.94	0.00	58.00
Cheerlead	Number of times per mediation that mediators indicate they think participants are doing a good job	1.18	1.43	0.00	4.00

Advocate/support	Number of times per mediation that mediators advocate for or support what one participant has expressed	2.11	2.86	0.00	11.00
Suggest	Number of times per mediation that mediators suggest a possible solution	1.84	2.61	0.00	13.00
Mediator solution	Number of times per mediation that mediators advocate for their own ideas for solutions	3.21	5.60	0.00	26.00
Ask for suggestion	Number of times per mediation that mediators ask for one suggestion from participants	9.64	11.18	0.00	47.00
Request reaction	Number of times per mediation that mediators ask what participants think about a possible solution	8.61	8.65	0.00	38.00
Brainstorm	Number of times per mediation that mediators ask participants to think of a number of ideas	7.14	12.69	0.00	52.00
Participant control	Number of times per mediation that mediator tells participants they are in control of the outcome	1.63	1.85	0.00	7.00
Summarize possible solutions	Number of times per mediation that mediators summarize solutions that participants have presented	19.98	19.94	0.00	97.00
Behave	Number of times per mediation that mediators tell participants how to behave in the mediation	2.59	4.40	0.00	19.00

Observation Results

Table 4 correlates mediator behaviors from the observation study. This indicates the relationship between mediator strategies used within one mediation. A positive correlation means that the more one behavior is observed within one mediation, the more the other behavior is also observed; that is, they are likely to be used together. A negative correlation means that the more one behavior is observed within one mediation, the less likely the other behavior is to be observed; that is, they are unlikely to be used within the same mediation. By definition, all correlations are between (+1) and (−1). Statistically significant correlations are in bold.

Though not an exhaustive summary of the correlation table, Table 5 is a grouping of behaviors that tend to be positively and negatively correlated with each other.

In other words, when mediators used any of the behaviors in the "positively correlated" groups, they were likely to use the other behaviors in that group as well. When they used any of the behaviors in the "positively correlated" groups, they were unlikely to use those behaviors in the "negatively correlated" group.

Discussion

With regard to the first survey described in this article, in the interest of self-disclosure we should mention that many of the authors were on the Definitions Committee that administered the survey. The hope was that the results of the survey would yield several clear definitions, which would be used by the then-emerging Maryland Program for Mediator Excellence (MPME) for training, mentoring, public education, and possibly certification. Instead, the results led to several interesting discussions, debates, disagreements, and ultimately this article. In many ways, the survey found what many had suspected. It found that there are a range of approaches and that these approaches seem to be consistent among the stated philosophies and the strategies used. These approaches even seem consistent with Riskin's spectrum from evaluative to facilitative, but they do not seem to reflect the other dimension of the Riskin grid from narrow to broad. Instead, the more directive mediators tend to be narrower and the more facilitative mediators tend to be broader.

However, the study finds that even the names *facilitative* and *evaluative* are almost useless because there is not agreement among practitioners on the

Table 4. Correlation of Mediator Behaviors with Other Mediator Behaviors

	Bigp	*Fact*	*Intv*	*Neut*	*Feel*	*Comm*	*Expl*	*Opin*	*Chee*	*Advo*	*Sugg*	*Meds*	*Asks*	*Requ*	*Brai*	*Parc*	*Summ*	*Beha*
Bigp	1.00																	
Fact	**0.27****	1.00																
Intv	**0.44*****	−0.20	1.00															
Neut	**0.59*****	0.03	**0.79*****	1.00														
Feel	**0.38*****	−0.15	**0.85*****	**0.68*****	1.00													
Comm	**0.34*****	−0.02	**0.39*****	**0.46*****	**0.38*****	1.00												
Expl	0.19	**0.30****	−0.11	−0.07	−0.20	**0.25***	1.00											
Opin	0.06	**0.27****	**−0.32****	**−0.27****	**−0.37*****	0.09	**0.48*****	1.00										
Chee	**0.39*****	−0.17	0.14	**0.34*****	0.03	0.22	0.14	0.13	1.00									
Advo	0.11	0.22	−0.13	−0.04	−0.19	0.12	**0.40***	**0.57*****	0.18	1.00								
Sugg	0.20	**0.34***	**−0.26***	−0.12	**−0.27****	−0.05	**0.22***	**0.50*****	0.02	**0.50*****	1.00							
Meds	0.19	0.20	−0.17	−0.13	**−0.26****	0.21	**0.37*****	**0.44*****	0.09	**0.53*****	**0.63*****	1.00						
Asks	**0.28****	−0.17	0.10	0.18	−0.08	0.09	0.14	0.09	**0.39*****	0.16	**0.34*****	**0.35*****	1.00					
Requ	**0.49*****	0.19	**0.36*****	**0.43*****	**0.32****	0.12	**0.25***	−0.09	**0.36*****	0.01	0.13	**0.23***	**0.32****	1.00				
Brai	**0.36*****	−0.12	**0.58*****	**0.60*****	**0.52*****	0.12	−0.20	**−0.34*****	**0.28****	**0.31****	0.10	–0.18	0.14	**0.51*****	1.00			
Parc	**0.32****	0.01	**0.48*****	**0.45*****	**0.45*****	0.13	0.09	−0.14	0.13	−0.06	−0.13	−0.19	0.15	**0.37*****	**0.23***	1.00		
Summ	**0.30****	−0.20	**0.28*****	**0.34*****	0.20	−0.04	0.00	−0.17	**0.40*****	−0.10	0.05	0.00	**0.77*****	**0.60*****	**0.46*****	**0.26***	1.00	
Beha	−0.05	0.05	**−0.27***	**−0.24***	**−0.24***	0.19	**0.28****	**0.51*****	**0.32****	0.23	0.08	0.18	0.04	−0.12	**−0.28****	−0.03	−0.08	1.00

Note: $N = 56$. Statistically significant correlations are bolded.
***Significant at a 1% significance level. **Significant at a 5% significance level. * Significant at a 10% significance level.

Table 5. Groups of Behaviors Likely to Be Used Together and Unlikely to Be Used Together

These Behaviors Are Likely to Be Used with Each Other	*And Unlikely to Be Used with These Behaviors*
Group 1	
Interest/value, feeling, neutral issue, bigger picture, common ground, request reaction, brainstorm, participant control, summarize possible solutions, cheerlead	Opinion, behave, suggest
Group 2	
Fact, explain, suggest, opinion, advocate/support, mediator solution, behave	Interest/value, feeling, neutral issue, brainstorm
Group 3	
Ask for suggestion, mediator solution, suggest	

definitions of these approaches in terms of "facilitative," "evaluative," and "transformative." In the open-ended qualitative question, "What mediation approach do you use?" half of the answers could be coded as "community," "directive," "mixed," "facilitative," "transformative," and "transformative/facilitative," while the other half were longer narratives that could not be coded (Table 2).

The lack of agreement among practitioners on names for the approaches used is significant and has important policy implications. For example, when a program asks mediators to use the transformative model, the survey results suggest that this does not necessarily mean that a consistent model is offered. Eight people calling themselves transformative mediators fall into cluster D, but two fall into cluster B, three fall into cluster C, and one falls into cluster A. When individuals co-mediate for a variety of programs because all programs use the "facilitative" model, they may still mediate with very divergent processes, making co-mediation a challenge. Of those who define themselves as facilitative mediators, fifteen fall into cluster D, twelve into cluster B, twenty-two into cluster C, and one into cluster A. Clearly, self-describing as facilitative does not clarify a specific recognizable approach. Mediators who call themselves "facilitative," for example, claim to be doing very different things in mediation. This situation can be confusing to mediation clients and is challenging for roster managers as well.

Members of still another group defined themselves as transformative/facilitative or facilitative/transformative. Of these, one was in cluster A, nine in cluster C, four in cluster B, and five in cluster D.

Interestingly, despite the fact that the literature discusses the concept of evaluative mediation at length, not a single one of the 249 respondents to the survey defined the approach as "evaluative," and only two defined their approach as "directive." However, 43 respondents fall into cluster A, which would be the closest to the theoretical definition of evaluative. Instead of defining themselves as evaluative, 2 call their approach "community," 7 "mixed," 2 "directive," 1 calls his or her approach "facilitative," 1 calls the approach "transformative," 1 "transformative/facilitative," and 29 responded with a longer philosophical narrative about their approach without naming it explicitly. Mediators who respond to the survey indicating that they use directive strategies don't give themselves the labels of "directive" or "evaluative." This is an important finding worthy of further exploration as to why mediators shy away from terms such as directive or evaluative, even while using strategies that the theoretical literature defines as evaluative and directive.

Finally, and most important, when the general public looks for a mediator, we observe that they barely know a definition for what mediation is, and the survey shows that the processes they could receive might differ radically, depending on the individual mediator.

Combining the observation results from the second study with the survey results from the first study allows an interesting analysis. It is important to note that the observation results are from seventy cases in community mediation programs, day-of-trial court programs, and a prosecutor's office program. There were a range of approaches used among these cases, but the low number of observations may result in less statistical significance than actually exists in the underlying population. Still, the areas where we do find statistical significance give a lot to consider. The two main groups of significant correlations in the observation study tend to reflect the two ends of the spectrum developed from the survey study: group 1 relates to the end of the spectrum in which participants control the conversation and the outcome, and group 2 relates to the end of the spectrum in which mediators control the discussion and contribute significantly to the outcome. This consistency between the study and the survey results reinforces the validity of the survey.

The second finding, however, may be even more interesting and gives pause to those who were hoping to use a description of the common cluster as the definition of mediation for the general public. As with all self-reported

surveys, respondents answer what they believe they do, or perhaps what they think they should do. The observation study measures what people actually do. The common cluster results from the survey imply that all mediators claim they "often" or "sometimes":

- Ask participants to think of many options and use formal brainstorming
- Ask questions and make comments seeking underlying values and interests
- Frame issues in a way that does not take sides
- Restate feelings that participants mention and sometimes those they allude to

These self-reported strategies would be consistent with the observation study behaviors of "brainstorm," "interest/value," "neutral issue," and "feelings." These four behaviors turn out to be negatively correlated with "opinion," "behave," and "suggest," which are the very behaviors used on the end of the spectrum where cluster A and cluster B lie. This finding implies that in a given mediation these two groups of mediator strategies are not used together, which is in opposition to what mediators say they do in the survey study.

There are a few possible explanations of this phenomenon. The first is that all mediators really do use these "common" strategies, but use them in different mediations (that is, directive strategies in one mediation, elicitive strategies in another). This would be the only explanation consistent with Picard's claim (2004) that mediators don't fall into a dichotomous definition but rather use a wide mix of strategies. A second explanation of the phenomenon is that mediators know, technically, that the definition of mediation includes asking for many options, seeking underlying values, framing issues neutrally, and naming participants' feelings, and they believe they do these things. However, when the mediators in clusters A and B actually mediate, they rarely use these strategies. The third possibility of the phenomenon is that knowing that the definitions of mediation include these strategies, mediators included them in their response to the survey as part of the "right" answer, even though they knew they rarely use them in practice. This would be consistent with Riskin's claim (1994) that even though mediators may borrow strategies from a number of approaches, evaluative mediators are likely to attempt to use facilitative skills but are less likely to have the skills to mediate within a facilitative framework.

Because there is not a direct connection between the reported strategies of the mediators who completed the actual surveys and the performance of those who participated in the observation study, it is not possible to distinguish among these possibilities. The results, however, do give pause for reflection and suggest that mediators may want to consider carefully how they describe their approaches to mediation, and whether or not the stated description matches what they actually do. These findings challenge us in the field to continue conducting research and having the difficult conversations about mediation definitions and about various approaches to mediation. These conversations should be grounded in a commitment to promote quality within the field, and to promote clarity for clients seeking mediation.

Implications for Mediators, Program Administrators, and Future Research

Because there is no accepted agreement as to the definition of mediation or even the definition of approaches to mediation, mediators should be prepared to describe in detail the process they offer and the types of strategies they employ during the process. This is important in describing their process to clients or potential clients and also in conversation with other mediators or mediation program staff.

If roster managers and mediation program administrators want to ensure some consistency among the mediation services offered, they may wish to define in detail the philosophical approach and the range of acceptable strategies for use within their program, rather than simply stating the name of an approach they find acceptable ("facilitative" or "transformative"). This also helps with quality assurance because it prepares programs and rosters to evaluate mediators according to those strategies.

Further research into approaches and strategies could combine these two studies by asking mediators what they think they do and then observing those same mediators in practice. This approach could also support follow-up questions with the mediators about discrepancies between what they think they do and what they actually did. This research may also get at why mediators who use more directive strategies don't define their approach as evaluative or directive. Finally, we should not forget that in the end it is the clients who most benefit from mediators being clear about what they do.

Appendix: Mediator Survey and Cluster Analysis

Cluster analysis is a statistical technique that groups observations together on the basis of similarities of variables or characteristics. Ideally, a "cluster" is a group of homogeneous observations. By definition the members within a cluster are similar to each other (that is, they minimize within-group variation). They are also dissimilar to members outside of the cluster and specifically to members of other clusters (they maximize between-group variation). For example, if we had data along two dimensions for a sample of individuals, we could plot these dimensions against each other and check for pockets of strong correlation, as illustrated in Figure 1.

Along one or two dimensions, it is relatively easy to examine the data visually for obvious patterns of separation or clustering within the population. The problem quickly becomes more complicated with a third or fourth dimension, or the seventy-six dimensions included in the mediator survey. A mathematical procedure is needed to simultaneously examine all of these dimensions and identify patterns or groups.

At its core, cluster analysis relies on some concept of similarity that can be quantitatively measured. That is, to group individuals or observations together we require a measure of the distance or similarity between them. We measure distances between the responses in our mediator survey data using a Euclidean measure for each variable x, defined as:

$$\text{Euclidean distance} = (xi - xj)^2 \text{ for observation i and observation j}$$

In common parlance, this measure is called "as the crow flies." Conceptually it is the easiest to visualize and grasp relative to other distance measures that are available for clustering. Given the categorical nature of our data, variability of scaling across variables in the database is not a problem. Other more complex distance measures would be more appropriate for these situations but are not necessary in our analysis.

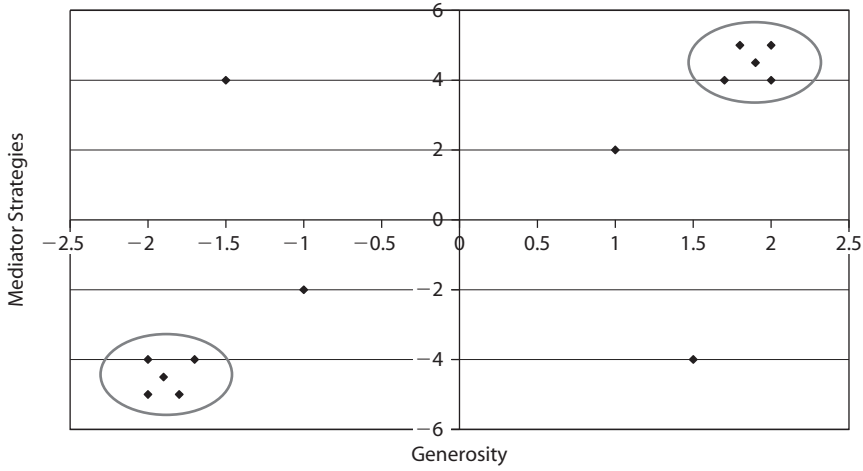
There are several methods of clustering, with hierarchical clustering being the most common and the one implemented in this analysis. Hierarchical clustering is an iterative process that may be either agglomerative (grouping from small to large) or divisive (dividing from large to small). In the agglomerative approach, every observation is initially placed in its own single cluster. The greatest similarities between clusters are then identified, and the most similar clusters are combined. Then new similarities are computed and clusters are combined again and again until some stopping rule is reached.

An important distinction between cluster analysis and other statistical or regression techniques is that of causality. With our cluster analysis, there is no distinction between dependent and independent variables. The entire set of interdependent relationships is examined. Our objective is simply to examine the population for patterns of similarity between individuals. There is no concept of quantifying performance or suggesting that one group of mediators is superior or inferior to another. The clusters identified are simply different from a statistical point of view.

The basic procedure for a cluster analysis is this:

1. Specify the objective and identify the data to be used. (We applied the clustering technique to all seventy-six variables from the mediator survey.)
2. Select a distance measure. (We chose squared Euclidean distance—the square root of the sum of the squared differences in value for each variable.)
3. Select a clustering procedure. (We chose the hierarchical agglomerative method.)
4. Specify the number of clusters to look for. (We tested a variety of number of clusters. We found strong evidence for three clusters and convincing evidence for five clusters.)
5. Interpret clusters and draw conclusions. Use graphical representation such as tree diagrams to illustrate.

Figure 1. Illustration of Clustering



Assess the robustness, reliability, and validity given sensitivity to assumptions. (We ran some sensitivity within our sample by reordering and splitting the sample. However, our sample is relatively too small to permit exhaustive testing.)

References

Bush, R. A. B., and Folger, J. P. *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition.* San Francisco: Jossey-Bass, 1994.

Hensler, D. "In Search of 'Good' Mediation: Rhetoric, Practice, and Empiricism." In J. Sanders and V. L. Hamilton (eds.), *Handbook of Justice Research in Law.* New York: Kluwer Academic/Plenum, 2000.

Herrman, M. S., Hollet, N. L., Eaker, D. G., and Gale, J. "Mediator Reflections on Practice: Connecting Select Demographics and Preferred Orientations." *Conflict Resolution Quarterly,* 2003, *4*(20), 403–427.

Kressel, K. "Mediation." In M. Deutsch and P. T. Coleman (eds.), *The Handbook of Conflict Resolution.* San Francisco: Jossey-Bass, 2000.

Kressel, K. "The Strategic Style in Mediation." *Conflict Resolution Quarterly,* 2007, *24*(3), 251–283.

Picard, C. A. "Exploring an Integrative Framework for Understanding Mediation." *Conflict Resolution Quarterly,* 2004, *21*(3), 295–311.

Riskin, L. L. "Mediator Orientations, Strategies and Techniques." *Alternatives to the High Cost of Litigation,* 1994, *12*(9), 111–114.

SAS Institute. "The Cluster Procedure," SAS 9.1 *Online Documentation,* Cary, N.C., 2007. http://support.sas.com/onlinedoc/913/getDoc/en/statug.hlp/cluster_index.htm#idxclu0002.

Wood, J. "Mediation Styles: Subjective Description of Mediators." *Conflict Resolution Quarterly,* 2004, *21*(4), 437–450.

Lorig Charkoudian is executive director of Community Mediation Maryland, and she serves on the Mediator Excellence Committee, which governs the Maryland Program for Mediator Excellence.

Cristian de Ritis is a director at economy.com in West Chester, Pennsylvania, where he develops econometric models and writes economic analyses.

Ramona Buck has been the public policy director at the Maryland Mediation and Conflict Resolution Office since 2001.

Carrie L. Wilson was trained as a bilingual mediator by the Baltimore Community Mediation Program and has collaborated as a research associate with Community Mediation Maryland.