What Works in Child Access Mediation: Effectiveness of Various Mediation Strategies on Short- and Long-Term Outcomes

Administrative Office of the Courts, Court Operations

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Lorig Charkoudian, Ph.D. designed the study, analyzed the data, and authored this report. Haleigh LaChance served as research coordinator and project manager. Six professional, full-time researchers collected the data (a full list of researchers can be found in Appendix F).

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Executive Summary

Overview

This research measures the effectiveness and efficiency of various approaches to mediation in custody, visitation, and child access cases in Maryland. The Maryland Rules (§ 9-205) require that all contested child access cases be ordered to mediation, except in cases of abuse. While referrals to mediation occur throughout the state, the specifics of the mediation programs and mediator strategies vary by jurisdiction. Within any given jurisdiction, mediation experiences may be different, depending on the skills and techniques of individual mediators.

Mediation is broadly embraced for family court cases because it is believed not only to achieve agreements to keep parents out of court, but also to support parents' ability to work collaboratively together in the best interest of their child. Because parents will have to continue to work together regardless of the legal outcome of their case, mediation is considered to be a process where they can begin to co-parent as they make joint decisions about their children. The hope is that through mediation, parents will reach a long-lasting agreement, enabling them to communicate and work together as the needs of their children change over time.

The goal of this research is to understand what components of the mediation process affect a variety of outcomes for participants. To that end, it examines which mediation strategies and program components affect the probability of reaching agreements and consent orders. This research further identifies which mediation strategies and program components affect: the types of agreements reached; the attitudinal shifts of the parents toward each other; and the parent's belief in their ability to work together, and does so on both the short-term (immediately after mediation) and the long-term (six months later).

This unique research, to our knowledge, is the only study conducted in the family court context that isolates actual mediator strategies and examines the impact of these strategies on changes in participants' attitudes, agreements, orders, and process experiences. Other studies report on participants' experiences of "the mediation process". One problem with these studies is that, depending on mediators' approaches, participants may be experiencing very different outcomes. When all of the processes are combined into one analysis, the range of outcomes may be masked. These studies may actually understate the potential of mediation because effective and ineffective strategies are grouped together as mediation.

Using the research method of behavioral coding, this study includes coded observations of what mediators actually did, what participants did, and what participants said about their experiences in mediation. Many questions were asked of participants before and after the mediation (i.e., pre-mediation, post-mediation) in order to measure the effect of mediation on changes in attitude. These same questions were asked 6 months after mediation in order to measure the long-term effect of various mediation strategies. Since this study includes information about the participants' pre-mediation attitudes and behaviors, the analysis captures the impact of mediator strategies alone, independent of participant attitudes towards mediation.

A summary handout of the strategies, data collection process, findings, and impact is included in Appendix A of this report.

Data and Analysis

Data for this study were collected in the family court mediation programs in Anne Arundel County, Baltimore County, and Charles County, Maryland. In Anne Arundel County, cases are referred to mediators on a court roster who meet the requirements of Title 17 (the Maryland Court Rules governing qualification of mediators). If participants file for a fee waiver in a case, they are referred to the Anne Arundel Conflict Resolution Center, a community mediation center, where they receive mediation at no cost. The Baltimore County Family Court provides free mediation to all parents through a program with seven staff mediators. In Charles County, participants are referred to mediators on the court roster who meet the requirements of Title 17. In all three counties, attorneys are not present during the mediation. The mix of programs and mediation strategies that their mediators use allows for enough diversity to measure the impacts of the different components of the process.

Thirty-five behaviors were coded by researchers to create variables measuring the mediator strategies. A statistical method called factor analysis was used to determine which strategies tended to be used together, and this factor analysis created new variables representing groups of strategies.

A statistical measure called regression analysis allowed the researchers to test the impacts of a number of different factors that could affect the outcomes of interest. This study uses regression analysis to isolate the short-term and long-term impacts of various program components and mediator strategies on agreement rates, consent order rates[1], and participants' attitude toward the other participant, the situation, and the mediation experience. To conduct this analysis, data were collected in a unique and comprehensive way, including pre- and post-surveys of participants immediately before and after mediation, phone surveys six months after the mediation, surveys of mediators, reviews of case files and court databases, and observations of mediation for the purpose of coding mediator strategies and participants' behaviors during the mediation. This allows for an in-depth analysis of the effects of various mediator strategies, while holding constant for other factors that may affect participant experiences. We include several measures of participant attitude, participant actions (as measured through behavior coding), whether participants are represented by or have consulted counsel, whether the police were called in the past in the case (as a measure of escalation), participant demographics (e.g.,

[1] A consent order is an order issued by the court that integrates agreements reached by the parties. It allows the court to enforce agreements presented by the parties and reflects their 'consent' to the contents of the order. Reaching a consent order indicates that participants were able to resolve the issue without trial. Participants could also reach a partial consent order, in which case the remaining issues would go to trial.

age, gender, race), whether participants attended a parenting class prior to attending mediation, and whether the mediators' gender matched the participants' gender.

For those cases in which an agreement was submitted to the court, the agreements were reviewed for their level of personalization. These agreements were evaluated based on use of parents' and children's names throughout the agreement, holidays specified beyond the standard list of federal holidays, topics covered beyond physical and legal custody, and the level of personalized language compared to a generic template.

Because reaching an agreement may also affect participants' experience of mediation, for all participant level data, the analysis holds constant (i.e., statistically controls for) whether or not an agreement was reached. This allowed us to isolate the impact of the other variables on the outcomes of interest.

Findings

Below we summarize the impacts of each set of strategies.

Caucus

The analysis of short-term outcomes found that the greater the percentage of time that the mediator spent in caucus, the more likely the participant was to indicate that the mediator respected them and did not take sides. This finding suggests that using caucus allows participants to build a positive sense of the mediator; however, more time in caucus also resulted in participants' self-assessment of their sense of hopelessness about the situation increasing from before to after the mediation. In addition, greater time in caucus resulted in participants decreasing their belief that they could work together with the other parent to resolve their conflict or that there were a range of options that could resolve their conflict. It appears that although caucusing increases faith in the mediator, it decreases faith and problem-solving potential with the other participant. It is important to remember that these are findings that are statistically significant even after holding constant for the attitude of the participant, the strategies used by the participant, and the level of escalation before the mediation. Although some mediators report that they move to caucus in more challenging situations, this method of analysis allows us to account for how challenging the situation was and find that, above and beyond those factors, time in caucus was associated with reported decreases in ability to work with the other person. Furthermore, the participant's ability to work with the other person was measured by asking the same question before and after the mediation, so it is an actual shift in the participants' attitudes that is measured, rather than a static question asked at one point in time. The percentage of time spent in caucus had no statistically significant impact (positive or negative) on reaching an agreement or a consent order.

The analysis of long-term outcomes found that the percentage of time spent in caucus had no significant impact on any of the long-term measures.

Mediator Directing Strategies

Mediator Directing Strategies included introducing and enforcing guidelines for behavior, explaining one participant's position to the other, as well as the mediator providing their opinion and advocating for one participant or the other. From survey responses immediately after the mediation (short-term), the greater the percentage of directing strategies the mediator employed, the less likely the participant was to indicate that the mediator respected them and did not take sides. In examining the likelihood that the case will return to court, the greater the percentage of mediator directing strategies, the more likely the participants were to file an adversarial motion (e.g., contempt, show cause, appeal, review of master's finding, and contested modifications) and the more adversarial motions they were likely to file.

Mediator Reflecting Strategies

From the short-term data set, Mediator Reflecting Strategies included frequent use of reflecting back the participants' emotions and interests, and clarifying with participants the topics to address.

The long-term data set for Mediator Reflecting Strategies included the same behaviors as the short-term, as well as two additional behaviors: reflecting back to participants a general summary of what they expressed; and asking open-ended questions.

This set of strategies is also characterized by mediators not using strategies that involve providing his or her own ideas and solutions to the participants.

In this analysis of short-term outcomes, Mediator Reflecting Strategies had significant effects on several outcomes of interest. In the short-term, the greater the percentage of Reflecting Strategies the mediator employed, the more likely the participant was to indicate that the other participant listened to them and increased understanding of them through the process. More use of Mediator Reflecting Strategies was also associated with a decrease in the dismissal of the other participant's perspective, when measured from before to after the mediation. The Reflective Strategies were also positively associated with an increase from before to after the mediation in the participants' belief that they could work together to resolve their conflicts and consider a range of options.

The mediator's use of Reflecting Strategies demonstrates several positive outcomes in terms of changes in the participants' attitude toward each other and belief that they could work together; however, the greater percentage of Reflecting Strategies was also associated with a lower likelihood of reaching an agreement. One possible explanation for this may be that the set of strategies included in Mediator Reflecting does not include any problem-solving strategies (neither asking participants for solutions nor offering mediator solutions). So it is possible that, in addition to the Mediator Reflecting Strategies, mediators are also using some other type of problem-solving strategy. The current analysis does not allow us to test for this; however, we can test for what would occur if a mediator combines the Mediator Reflecting Strategies with asking participants for their ideas about solutions. We find that if the two are used together in a mediation, the overall impact is positive in terms of reaching an agreement. Even if only

Mediator Reflecting Strategies are used and no agreement is reached, participants remain as likely to reach a consent order as in cases in which other strategies were used.

Mediator Reflecting Strategies were the only set of mediator strategies that were tied to more personalized agreements. There are two ways to understand this outcome. One is that because the Reflecting Strategies are about listening to and understanding participants' perspective, the agreements that come out of these mediations are more likely to be connected directly to these perspectives. The second is that mediators who use strategies that are focused on listening and understanding the perspectives of participants are also more likely to write agreements that are specific to the uniqueness of the participants with whom they are working.

Finally, Mediator Reflecting Strategies were the only set of mediator strategies that had a significant impact on long-term outcomes. Specifically, Mediator Reflecting Strategies were positively associated with an increase from before the mediation to six months after the mediation in the participants reporting that they can talk about concerns with the other parent and work as a team in raising their child. Mediator Reflecting Strategies were also positively associated with an increase from before the mediation to six months after in the participants' prioritization of their children's needs, a desire to have a positive relationship with the other parent, and a willingness to consider the other parent's perspective.

Mediator Eliciting Participant Solutions

From the short-term data analysis, Mediator Eliciting Participant Solutions is characterized by mediator strategies that involve asking participants what solutions they would suggest, summarizing those solutions, and checking in with participants by asking how they think those ideas might work for them. This set of strategies has the most positive impact on the short-term outcomes of interest. The greater percentage of Mediator Eliciting Participant Solutions, the more likely the participant was to indicate that the other participants listened to them and increased understanding of them through the process. Furthermore, the greater percentage of Mediator Eliciting Participant Solutions, the more likely the participants were to indicate that they became clearer about their desires and that the underlying issues came out. In terms of a shift in attitude from before mediation to immediately after mediation, the greater the percentage of Mediator Eliciting Participant Solutions, the more likely the participants were to believe they could work together to resolve their conflicts with a range of options after the mediation than they had been before the mediation. The greater the percentage of Mediator Eliciting Participant Solutions, the more likely the case was to reach an agreement and the more likely the case was to result in a consent order.

These outcomes are important for several reasons. The inclusion of participant attitudes and behaviors in the analysis assures that the outcomes hold constant regardless of participant attitude and behavior. Only Mediator Eliciting Participant Solutions involves asking participants their ideas about solutions, and it is the only set of strategies that is positively associated with an agreement and a consent order. This is in addition to their association with several positive outcomes in terms of participants' shifts in attitude toward each other and the conflict.

Finally, Mediator Eliciting Participant Solutions did not have any significant impacts on any of the long-term measures.

Mediator Offering Perspective

In the short-term data analysis, Mediator Offering Perspective is characterized by strategies that involve the mediator sharing his or her ideas about the situation, such as opinions, ideas about what topics participants should discuss, suggestions, and advocacy for perspectives coming from either or both participants. The strategy of reflecting back what participants were saying was not generally used with the strategies of Mediators Offering their Perspective. Mediator Offering Perspective did not have a statistically significant effect on any of the outcomes measured in this analysis, short or long-term.

Reaching an Agreement

Reaching an agreement in mediation resulted in participants reporting several positive outcomes after the mediation. Reaching a full agreement or partial agreement had a positive effect on participants reporting listening to each other and increasing understanding of each other as well as a positive effect on participants reporting satisfaction and likelihood of reusing mediation. In addition, reaching a full or partial agreement had a positive effect on participants reporting that they became clearer about their desires and that the underlying issues came out. Reaching full or partial agreement had a positive effect on participants feeling less hopelessness after the mediation and a negative effect on participants dismissing the other participant's needs and perspectives. Finally, reaching an agreement did not have a significant impact on any of the long-term measures.

Parenting Class

In general, participants' attendance in a parenting class prior to mediation did not have a clearly positive or negative effect on most outcomes of interest. Participants who attended the parenting class were less likely than those who did not attend parenting class to indicate that they became clearer about their desires as a result of mediation and that the underlying issues were discussed in the mediation. One possible explanation may be that participants felt clearer about their goals and discussed underlying issues before attending mediation due to the parenting class, and thus, did not associate these outcomes with the mediation.

Participants who attended a parenting class were also more likely to have a more personalized agreement compared to those who did not attend a parenting class. This finding may indicate they better understood the goal of mediation was to develop solutions specific to their family and were more likely to take advantage of such an opportunity.

Participants who attended a parenting class were more likely to report an increase from before the mediation to six months after the mediation in their sense of the importance of prioritizing the children's needs, a desire to have a positive relationship with the other parent, and a willingness to consider the other parent's perspective.

The researchers did not have detailed information about the nature, or quality of the different parenting classes offered in the jurisdictions studied, therefore it remains uncertain what might be affecting these outcomes.

Location of the Mediation

Before the mediation started, the researchers asked the participants if the location of the mediation was convenient for them. The participants' perception that the location was convenient had a positive and significant effect on the likelihood of reaching an agreement in mediation. It did not have a significant effect on other variables measured in this analysis. Participants' comfort and sense of convenience may make them more open and willing to engage and stay with the process until an agreement is reached.

MPME Membership

Maryland Program for Mediator Excellence (MPME) membership did not have a significant effect on most of the outcomes measured. The one exception is on the personalization of agreements. Mediators who were MPME members were more likely to write more personalized agreements. This difference may be because the MPME's focus on ethics, including self-determination, as well as the continuing education and reflection opportunities with MPME keep mediators grounded in the basics of mediation as a process where participants can develop their own solutions.

Recommendations

This research is unique in identifying the short-term and long-term impact of specific mediator strategies on both immediate (short-term) outcomes as well as outcomes six months after the mediation (long-term), and subsequent adversarial motions 12 months after the mediation. One reason for the nearly universal support of mediation for child access disputes is that parents have to work together to co-parent their child regardless of their relationship status. Therefore, the findings related to mediator strategies that are positively related to an increase in participants' sense of hope, clarity and understanding of each other, and their belief that they can work with the other parent are relevant.

Mediators reflecting what participants are saying (with a focus on their emotions, interests, and clarification of topics) and mediators asking participants for solutions are consistently positively related to outcomes that indicate a greater ability for parents to work together. Mediators reflecting what participants are saying and asking them to share more of their perspectives is also positively related to long-term increases in parents' reported ability to work together to meet the children's needs and their willingness to consider the other parents' perspective. Although the reflecting strategies alone are associated with a lower likelihood of agreement, the combination of reflecting and asking participants their ideas for solutions are positively associated with agreements. Therefore, this combination of strategies can be considered a promising practice for child access mediation.

The strategies involving mediators sharing their opinions and ideas generally did not have a statistically significant impact in any direction.

Strategies involving the mediator directing the behavior of participants, attempting to explain information from one participant to the other, and advocating for one or the other participant's ideas resulted in participants having a less favorable opinion of the mediator. In addition, these strategies were associated with a greater likelihood that the case would return to court with an adversarial motion and are associated with a greater number of adversarial motions. Therefore, court programs should carefully consider the strategies that they encourage and discourage among their mediators.

The impact of caucusing resulted in the participants appreciating the mediator (reporting that the mediator listened, respected the participants, and did not take sides), but resulted in less of an ability or desire to work with the other participant. These findings are significant even when controlling for the level of conflict coming into the mediation session(s). These findings suggest that a caucus is not consistent with the goal of supporting participants working with one another.

Participants who report that the mediation location is convenient are more likely to reach an agreement. This finding suggests that efforts to schedule mediations in locations convenient to participants may result in a higher rate of reaching agreements.

MPME membership is associated with more personalized agreements. Even though this outcome is the only one for which MPME membership is significant, personal agreements are an indicator of the self-determination ethic of the mediation process. Therefore, this finding points to the importance of encouraging MPME membership among child access mediators.

Participation in parenting classes prior to mediation appears to have somewhat mixed short-term outcomes and one positive long-term outcome. Because parenting classes may differ across jurisdictions, more research is needed to identify what approaches to parenting classes are effective.

This study provides a look into what happens during mediation sessions, and how mediator strategies impact participants. The Maryland Judiciary is hopeful that this research model can be replicated with a larger and more diverse sample of cases. Continued research examining these crucial questions could result in more confident and evidence-based recommendations for effective mediator strategies and court mediation program structures.

Introduction

This research measures the effectiveness and efficiency of various approaches to mediation in custody, visitation, and child access cases in Maryland. In Maryland, court rules (Maryland Rules, §9-205) require that all contested child access cases be ordered to mediation, except in cases of abuse. While referral to mediation services occurs throughout the state, the specifics of the mediation programs are different in each jurisdiction. Within any given jurisdiction, the experience of mediation may be different, depending on who is serving as a mediator.

Mediation is broadly embraced for family court cases because it is believed to not only achieve agreements to keep parents out of court, but also to support parents to develop the ability to work collaboratively together in the best interest of their child. Because parents will have to continue to work together regardless of the legal outcome of the case, mediation is considered to be a process where they can begin to co-parent as they make joint decisions about their children. The hope is that through mediation parents may reach an agreement to which they feel committed to follow through and about which they will communicate and work together to address the changing needs of their children over time.

The goal of this research is to understand which components of the mediation process affect what kind of outcomes for participants, in the short and long-term. To measure whether or not mediation has the outcomes described in the previous paragraph would require the comparison of mediated cases to similar cases that did not go through the mediation process. In Maryland, all eligible cases are mediated, and therefore there could not be a natural control group. It was determined it would be unethical to deny parents access to mediation services for the purposes of this research. Instead, this research seeks to understand what approaches to mediation and what components of the mediation process are successful in reaching a variety of important outcomes.

As would be expected, this research examines what mediation approaches and program components affect the probability of reaching agreements and consent orders[2]. This research further identifies which mediation strategies and program components affect: the types of agreements reached; the attitudinal shifts of the parents toward each other; and the parent's belief

[2] A consent order is an order issued by the court that incorporates agreements reached by the parties. It allows the court to enforce the parties' agreements and reflects their 'consent' to the contents of the order. Reaching a consent order indicates that participants were able to resolve the issue without trial. Participants could also reach a partial consent order, in which case the remaining issues would go to trial.

in their ability to work together, and does so on both the short-term (immediately after mediation) and the long-term (six months later).

To conduct this analysis, data was collected in a unique and comprehensive way, including pre- and post-surveys of participants, phone surveys with participants six months after mediation, surveys of mediators, reviews of case files and court databases, and observations of mediation for the purpose of coding mediator and participants' strategies during the mediation. This allows for an in-depth analysis of the impact of mediator strategies, while holding constant for the complexity of the case and the level of hostility between the participants. Regression analysis was used to isolate the impact of various program components and mediator strategies on the outcomes of interest.

Overview of Data and Data Collection Process

Data for this study were collected in the Family Court Mediation programs in Anne Arundel County, Baltimore County, and Charles County. In Anne Arundel County, cases are referred to mediators on a court roster who meet the requirements of Section 17 of The Maryland Rules (governing qualification of mediators). If participants file for a fee waiver in a case, they are referred to the Anne Arundel Conflict Resolution Center, a community mediation center, where they receive mediation at no cost. The Baltimore County Family Court provides free mediation to all parents through a program with 7 staff mediators. In Charles County, participants are referred to individuals on the court roster who meet the requirements of Title 17. In all three counties, attorneys were not present during the mediation. The mix of programs and mediation approaches allows for enough diversity to measure the impacts of the different components of the process.

Data Collection Process

Data was collected through several methods: surveys of participants before and after the mediation as well as six months later; surveys of the mediators; behavior coding of participants and mediators during the mediation session; and review of court records. Researchers coordinated with individual mediators on the Anne Arundel and Charles County rosters and the intake/scheduling staff for the Anne Arundel Community Mediation Center and the Baltimore County Family Mediation office to identify eligible cases. Only those cases for which an initial filing for custody or visitation was contested were considered for the study. Those cases for which the parents had an existing parenting plan and returned to mediation to modify their plan were removed from the data set. Upon identifying scheduled, eligible cases, researchers then attended as many of these sessions as possible, based on geography and staffing. Only cases that researchers were able to attend for all of the sessions were included in the data set so as to ensure that the data provided a full picture of what occurred.

For each case, two researchers met with the participants in advance to review the research protocol and obtain informed consent. If both participants consented to be part of the research process, the researchers conducted the pre-mediation survey with the participants. (All surveys are in Appendix D). While the researchers conducted the verbal pre-mediation surveys with the participants, the mediator filled out a survey about their role, background, philosophy and demographics. As most mediators were observed more than once, they answered personal

demographics and questions regarding their philosophy toward mediation the first time they were observed. At subsequent observations, mediators answered survey questions about their role within the court system, their experience, and training, as these factors were more likely to change over time. Researchers then observed the case and conducted post-mediation surveys with participants after the session. If there were multiple sessions, the researchers attended all sessions. The survey from the final session was used in the data set for this analysis.

Six months following the mediation, researchers called participants to conduct a follow-up interview. As an incentive for participation, participants who completed the phone interview were sent a check for $10. Contacting participants presented a significant challenge. It often took many attempted calls before participants could be reached for the interview. After 5 failed attempts, the participant was determined to be unreachable. While the standard timing for the call was six months after the mediation, the average length of time between the mediation and the follow up call was 7.03 months, with a standard deviation of 1.85. The minimum amount of time was two months (by error) and the maximum was 20 months. The maximum of 20 was considered an outlier. The majority of interviews were conducted 6-8 months post mediation.

Behavior coding was used to track actions taken by the mediators and by the participants during the mediation session (see Appendix E for final code books). Behavior codes were created initially through a review of the behavior codes used in a previous study of mediator strategies (Charkoudian and Wayne, 2010; Charkoudian, 2012). The codes were adjusted based on feedback from researchers in the previous studies and a review of recent literature on approaches to mediation. The draft codes were also reviewed by other ADR researchers in Maryland who provided additional feedback. Two research assistants were trained to conduct mediator behavior codes and three research assistants were trained to conduct participant behavior codes. During the training, the codes were further refined as the researchers identified points of confusion or inconsistency. The proportion of the use of each particular mediator strategy was calculated, as this would be the variable that would ultimately be used. According to Yoder and Symons (*Observational Measurement of Behavior*, 2010, p. 161), this final variable is the appropriate value to compare across observers to test for reliability. Training continued until researchers had reached a level of agreement of at least 80% on each individual proportion.

After six months in the field, the researchers reconvened to examine if any 'drift' had occurred, away from the original code definitions and their inter-rater reliability. Together, the two mediator coders and three participant coders watched both live mediation sessions and video role-playing. Their results were examined for level of agreement. No measurable drift was found in the agreement rates of either the mediator coders or participant coders.

Approximately mid-way through data collection, two of the five trained researchers left the project and were replaced. The remaining mediator coder and two remaining participant coders taught the established codes to the new researchers, under the supervision of the principal investigator. Training continued until the new researchers reached the 80% minimum level of inter-rater reliability for each variable.

Finally, data was collected from a review of the court casefile at least six months after the mediation session had occurred. Researchers requested each original casefile from that county's clerk's office, and examined the original filing paperwork, any mediated or negotiated parenting

plan that had been submitted to the court, the master's or judge's notes from hearings on the case, and the final judicial or consent order determining custody and visitation.

For those cases in which a parenting plan agreement was submitted to the court, the agreements were reviewed for their level of personalization. Of the 80 cases resulting in a full or partial agreement, 76 of the agreements were reviewed for personalization. Four were not able to be coded because two were missing from the court's record and two had not been retained by the mediator.

One researcher, with significant experience as a family law attorney and mediator, reviewed all agreements. Each agreement was scored along five categories, resulting in a total score of 0-7. The categories included naming the parents throughout the agreement, naming the children throughout the agreement, holidays specified beyond the standard list of federal holidays, topics covered beyond physical and legal custody, and the level of personalized language compared to generic language.

Six months after the mediation session, research assistants called the mediation participants to conduct the follow up survey by phone. Researchers reviewed the sequence of case events in Maryland Case Search (an electronic searchable database) for each case on the twelve-month anniversary date of the custody decision. Researchers then tracked the number and type of motions related to custody or visitation, the number and type of hearings related to custody or visitation, and the number and type of contempt filings related to custody or visitation.

Data Set

The resulting data set is rich with the possibility for analyzing the components of the mediation process and their impact on outcomes. The resulting variables are defined in Table 1 below:

Table 1. Descriptive Definition of Variables

Variable	**Definition or Question Text**
Case Characteristics	
Agreement	Was an agreement signed and submitted to the court? (no, partial, yes)
Consent Order	Was a Consent Order submitted to and accepted by the court? (no, partial, yes)
Post Mediation Progress	Created by subtracting the Consent Order variable from the Agreement variable, thus indicating if participants went from having no agreement to having a consent order post mediation or having an agreement to having no consent order entered.
Personalization of Agreement	A score, ranging from 0-7, on the level of personalization of the agreement including names of parents or children throughout, personalization of the language and topics, and inclusion of additional holidays or topics.
Police Called	Did any participant report the police had been called?
Total Time	Total time, in minutes, spent in mediation over all sessions

Variable	Definition or Question Text
Pre-Test Attitudinal Measures of Disagreement (1) or Agreement (5)	
Feel Prepared	I feel prepared for a possible trial.
Prefer Trial	I would prefer that we go to trial instead of being in a mediation or facilitation today.
Hope to Resolve	I hope we can resolve this case in mediation or facilitation.
Feel Pressure	I feel pressure to participate in this mediation or facilitation.
Waste of Time	I believe mediation or facilitation to be a waste of time.
Clear Idea	I have a clear idea of what I want to get from today's mediation or facilitation.
Know Role Mediator	I have a clear idea of what a mediator does.
Know Rights	I know my legal rights as it pertains to this case.
Know Procedures	I am aware of court procedures related to cases of custody and visitation.
Prepared for Trial	Have you done anything to prepare for a possible trial in this case? (no, not sure, yes)
Prepared for Mediation	Have you done anything to prepare for today's mediation? (no, not sure, yes)
Participant Characteristics	
Represented or Consult	Are you represented by a lawyer? If not, did you consult a lawyer before coming today?
No Prior ADR	Prior to today's ADR session, have you ever been involved in any of the following processes – mediation, settlement conference, arbitration, or community conferencing.
Parenting Class	Have you participated in the court-referred parenting classes?
Gender	Coded 0 for female, 1 for male.
Age	How old were you on your last birthday?
White	Coded 1 if white, coded 0 if not.
Post-Test Attitudinal Measures of Disagreement (1) or Agreement (5)	
Mediator Listened	The mediator(s) or facilitator listened to what I had to say without judging me or my ideas.
Mediator Took Sides	The mediator(s) or facilitator seemed to take sides.
Mediator Respected	The mediator(s) or facilitator treated me with respect.
I Could Express	I was able to express myself, my thoughts, and my concerns during the mediation / facilitation.
Mediator Understood	I think the mediator(s) or facilitator understood what I was expressing.
I Became Clear	Through mediation or facilitation, I became clearer about what I want with regard to custody and visitation.
I Understand Other	Through the mediation or facilitation, I think I understand the other person/people involved in the conflict better.
Other Understands Me	Through the mediation or facilitation, I think the other person/people involved in the conflict understand me better.
Mediator Prevented Topics	The mediator(s) or facilitator prevented us from discussing important topics.
Other Listened	The other person/people listened to me.

Variable	Definition or Question Text
Mediator Pressured	The mediator(s) or facilitator pressured us to reach an agreement in mediation.
We Controlled	Together, the other person/people and I controlled the decisions made in the mediation.
Mediator Controlled	I feel like the mediator(s) or facilitator controlled the decisions made in the mediation or settlement conference.
Reuse Mediation	I would bring other conflicts to mediation or facilitation in the future.
Recommend Mediation	I would recommend mediation or facilitation to others involved in conflicts.
Satisfied Outcome	I am satisfied with the outcome of the mediation or facilitation.
Satisfied Process	I am satisfied with the process of the mediation or facilitation.
Issues Resolved	Do you think the issues of custody and visitation are resolved? (no, partially, yes)
Outcome Fair	I think the outcome reached today is fair. (Asked only of participants who reached a partial or full agreement.)
Can Implement	I think I can implement the results of the outcome reached today. (Asked only of participants who reached a partial or full agreement.)
Childs Needs Met	My children's needs are met by the agreement reached today. (Asked only of participants who reached a partial or full agreement.)
Satisfied Judiciary	I am satisfied with my interactions with the judicial system during this case.
Difference in Level of Agreement or Disagreement from Before to After Intervention. (Positive indicates an increase in agreement with the statement).	
Difference-Number of Ways	I think there are a number of different ways to resolve our issues related to custody and visitation.
Difference-Child's Needs	It's important that my child(ren)'s needs are met in our issues related to custody and visitation.
Difference-My Needs	It's important that I get my needs met in our issues related to custody and visitation.
Difference-Important to Understand Other	It's important that I understand what the other person/people want in our issues related to custody and visitation.
Difference-Learn They Are Wrong	The other person/people need to learn that they are wrong in our issues related to custody and visitation.
Difference-Their Needs	It's important that the other person/people get their needs met in our issues related to custody and visitation.
Difference-Positive Relationship	It's important for me to have a positive relationship with the other person/people involved in our issues related to custody and visitation.
Difference-No Control	I feel like I have no control over what happens in our issues related to custody and visitation.
Difference-Wants Opposite	The other person/people involved in this custody and/or visitation dispute want the exact opposite of what I want.
Difference-Can Talk Concerns	I can talk about my concerns to the person/people I have conflict with.

Variable	Definition or Question Text
Difference-No Difference	It doesn't seem to make any difference what I do in regard to our issues related to custody and visitation, it'll just remain the same.
Difference-Conflict Negative	In general, conflict is a negative thing.
Difference-Court Cares	The court system cares about helping people resolve disputes in a fair manner.
Difference-Children Doing Well	The children seem to be doing well with our current arrangement.
Difference-I Can Decide	I have the ability to make decisions in the best interest of our child(ren).
Difference-Other Parent Can Decide	The other parent has the ability to make decisions in the best interest of our children.
Difference-We Can Decide	We are able to make decisions together that are in the best interest of our children.
Difference-Work As Team	We work well together as a team when it comes to raising our children.
Follow-Up: Return to Court for Enforcement	
Adversarial Motion	Coded 1 if in the 12 months after the final custody decision either participant filed any of the following: adversarial motions including contempt, show cause, appeal, review of master's finding, and contested modifications. Coded 0 if none of these were filed.
Number of Adversarial Motions	The total number of adversarial motions (including adversarial motions including contempt, show cause, appeal, review of master's finding, and contested modifications) filed in the 12 months after the final custody decision.
Follow Up Test Attitudinal Measures of Dissatisfaction (1) or Satisfaction (5) – Measured Six Months after Mediation	
Satisfied with Outcome	At this point, how satisfied are you with the final outcome reached?
Outcome Working	How well is the outcome you reached working for you?
Outcome Working for Children	How well is the outcome reached working for your children?
I Followed Through	How well do you think you followed through on the outcome?
Other Person Followed Through	How well did the other/s follow through on the outcome?
Would Recommend	How likely are you to recommend mediation or facilitation to others involved in a disputed custody situation?
Issues Resolved	
Relationship Since Intervention	
Continued Interaction	In the last six months, have you had any contact with the other person/people involved in the custody/visitation decisions?

Variable	Definition or Question Text
Contact Better, Same, or Worse	*(Asked only if above answer is yes):* Are the interactions worse, the same, or better than six months ago?
New Problems Arisen	Since the final outcome was reached, have new problems arisen between you and the other person/people?
Difference in Level of Agreement or Disagreement from Before Intervention to Six Months After Intervention. (Positive represents an increase in agreement).	
Follow Up: Difference-Number of Ways	I think there are a number of different ways to resolve our issues related to custody and visitation.
Follow Up: Difference-Child's Needs	It's important that my child(ren)'s needs are met in our issues related to custody and visitation.
Follow Up: Difference-My Needs	It's important that I get my needs met in our issues related to custody and visitation.
Follow Up: Difference-Important to Understand Other	It's important that I understand what the other person/people want in our issues related to custody and visitation.
Follow Up: Difference-Learn Wrong	The other person/people need to learn that they are wrong in our issues related to custody and visitation.
Follow Up: Difference-Their Needs	It's important that the other person/people get their needs met in our issues related to custody and visitation.
Follow Up: Difference-Positive Relationship	It's important for me to have a positive relationship with the other person/people involved in our issues related to custody and visitation.
Follow Up: Difference-No Control	I feel like I have no control over what happens in our issues related to custody and visitation.
Follow Up: Difference-Wants Opposite	The other person/people involved in this custody and/or visitation dispute want the exact opposite of what I want.
Follow Up: Difference-Can Talk Concerns	I can talk about my concerns to the person/people I have conflict with.
Follow Up: Difference-No Difference	It doesn't seem to make any difference what I do in regard to our issues related to custody and visitation, it'll just remain the same.
Follow Up: Difference-Children Doing Well	The children seem to be doing well with our current arrangement.
Follow Up: Difference-Work As Team	We work well together as a team when it comes to raising our children.
Follow Up: Difference-We Can Decide	We are able to make decisions together that are in the best interest of our children
Participant Codes	
Interrupt	Any time a participant starts speaking while another participant is speaking. This should be coded even if not perceived as hostile. If there are a series of interruptions, *Interrupt* should still only be coded once for each participant in a 1 minute period.
Wrong	Percentage of total strategies that meet the following definitions: Any statement in which a participant: • indicates that other participant is wrong about a specific issue. • points out something that they consider to be negative that the other participant did in the past or in the mediation.

Variable	Definition or Question Text
	• indicates that other participant is lying about a specific thing. • indicates that they do not trust the other participant. • indicates that they don't care about the other person's needs.
Put Down	Percentage of total strategies that meet the following definitions: Any statement in which a participant: • makes a generalization about the other participant's behavior and criticizes it. This applies to behavior either in the mediation or in the past. Includes adverbs of frequency (such as always, every time, constantly, everywhere, anyplace, any time, whenever, everything) or a negative adjective (lazy, crazy, ugly) and use of negative adjectives to make generalizations about the other participant's skills, property, etc. • makes an ironic/sarcastic comment about the other person. This is not defined by the tone used, but when the statement means the opposite of what was said. • calls the other participant a name or uses a derogatory term to describe the participant.
Need/Want/Feel	Percentage of total strategies that meet the following definitions: Any statement in which a participant: • expresses his/her needs, interests, feelings, or emotions. • describes how what is occurring affects the speaker or someone they are speaking. • expresses how s/he felt.
Care/Appreciate	Percentage of total strategies that meet the following definitions: Any statement in which a participant: • expresses interest, concern, understanding, or empathy in the other participant's needs or feelings. • expresses appreciation of other participant's behavior or characteristics or ideas. • demonstrates acceptance of an apology, in response to an apology.
Question	Percentage of total strategies that meet the following definitions: Any question in which a participant solicits information from the other participant, with or without edge in their voice.
Responsibility/Apology	Percentage of total strategies that meet the following definitions: Any question or statement in which a participant: • takes responsibility for some role in the conflict, including taking responsibility for actions within the mediation. • apologizes for a specific behavior or action, including within the mediation.
Participant Solution	Percentage of total strategies that meet the following definitions: Any statement in which a participant makes a specific future-focused suggestion about what could solve the problem (including within the mediation). These are most often in present or future tense, and can

Variable	Definition or Question Text
	include hypothetical solutions or an if-then clause. A Participant Solution can involve a negative concept if it is specific.
Accept Solution	Percentage of total strategies that meet the following definitions: When participants formally accept a solution. This should be coded for all participants who are explicitly agreeing.
Reject Solution	Percentage of total strategies that meet the following definitions: Any statement in which a participant: • explicitly rejects a solution that it posed to them, by the other participant or the mediator, in the previous speaking turn. • indicates that a solution the other participant suggested will not work, or that they are not willing to accept it.
Silence	Percentage of total strategies that meet the following definitions: Any instance in which everyone (all participants and mediators) is silent for more than 10 seconds.
Process Complaint	Percentage of total strategies that meet the following definitions: A statement in which a participant complains about the process or the mediator's behavior in it.
Responsibility/Wrong	Percentage of total strategies that meet the following definitions: when a participant assigns mutual responsibility to both parties, including themselves (both *wrong* and *responsibility/apology* simultaneously). NOTE: this is a combination code.
Mediator Characteristics	
Mediator Matches Gender	Does the gender of the participant match the gender of any mediator at the table?
Number of Cases – 12 months	To the best of your recollection, how many cases have you mediated in the past twelve months?
MPME Member	Are you a member of the Maryland Program for Mediator Excellence?
Mediator Style	Please describe your style or orientation as a mediator.
Evaluative	
Facilitative	
Transformative	
Analytical	
Narrative	
Inclusive	
No Style	No particular style or orientation.
Mediator Codes	
Reflections	Percentage of total strategies that meet the following definitions: Any statement which: • paraphrases what either participant has said about the main issues in the conflict and repeats it back, with or without checking for accuracy. • the mediator repeats back what participants have said, with a questioning tone as if to check to see if they got it correct.

Variable	Definition or Question Text
Emotions	Percentage of total strategies that meet the following definitions: Any statement from the mediator that: • addresses participants' feelings. • encourages participants to express their own feelings. Any statement in which a mediator reflects a feeling that a participant has indicated but not stated directly. Any statement or question in which a mediator begins with "feel…." and follows with an emotion or quasi-emotion word.
Interests	Percentage of total strategies that meet the following definitions: A reflection or paraphrasing in which a mediator tries to name the value or goal behind the position a participant articulates. This would include attempting to understand the interest or value that the participant has for their children or someone for whom they are speaking.
Open Question	Percentage of total strategies that meet the following definitions: Any question which attempts to get participants to talk about their perspective on the situation, generally open-ended questions. Questions which attempt to get beyond the surface position to an underlying goal or value. Includes hypothetical questions about things occurring differently in the past.
Fact Question	Percentage of total strategies that meet the following definitions: Any question: • to which yes/no can be answered. • that asks for one specific detail or attempts to establish a piece of information as true. • attempt to determine who was or should be responsible for something that occurred in the past.
Summary of Facts	Percentage of total strategies that meet the following definitions: A summary of specific legal or technical facts in the case, which includes at least two facts and quantitative information.
Mediator Opinion	Percentage of total strategies that meet the following definitions: Any statement in which the mediator: • talks about their own personal experiences or previous mediation experiences, as they relate to the situation. • expresses their opinion about the mediation process, or the way they would describe the process. • provides personal information about themselves or answers a personal question a participant asks of them in a way which provides information. • expresses his/her opinion about the situation. • brings up a piece of information they got from before the mediation, either from the intake file, the court file, previous conversations with the participants, etc. with an indication that they are bringing it from one of these places. • expresses their opinion about a potential solution.

Variable	Definition or Question Text
	• expresses his/her opinion about what the group has said with some degree of certainty or conclusion. • explains their analysis of the dynamics of the relationship. • finishes a sentence for a participant. • praises both participants' behavior in mediation.
Advocate/Support	Percentage of total strategies that meet the following definitions: Any statement in which the mediator: • indicates support for or agreement with one participant's position/ideas. • advocates for one participant's position / ideas. • praises one participant's behavior in mediation. • criticizes one participants' behavior or approach. • frames the topic in terms of one participants' view of the situation.
Behavioral Direction	Percentage of total strategies that meet the following definitions: Any statement in which a mediator: • sets guidelines or rules for participants to follow during the mediation, or tells participants how to act during the mediation. • choreographs participants' behavior in a certain way. • attempts to tell participants how to behave in response to swearing, cursing, yelling, interrupting, or insults, or breaking any other rules the mediator has established. Used when mediators repeat the participants' names over and over or say "ladies, ladies…" or "gentlemen, gentlemen…" in an attempt to get attention to restore order. Any time a mediator uses a private session or a break in response to swearing, cursing, yelling, interrupting or insults to a participant.
Common Ground	Percentage of total strategies that meet the following definitions: Any statement by the mediator which points out what participants have in common, a perspective they share, something they agree on, or identifies an issue both have in common.
Explain	Percentage of total strategies that meet the following definitions: Any statement in which the mediator: • offers "re-interpretation" or explanation one participant's behavior or position to the other participant, using a name or pro-noun in the commentary. • states one participant's position to the other participant. • asks participants to consider the other's perspective.
Focus/Narrow	Percentage of total strategies that meet the following definitions: Any comment by a mediator which repeats, clarifies, or focuses the conversation onto specific topics for discussion. Any formal action by the mediator involving making a physical list of topics. Includes questions that ask participants to prioritize the order of topics in which they want to work.

Variable	Definition or Question Text
Introduce Topic	Percentage of total strategies that meet the following definitions: Any statement by a mediator which raises an issue that has not been raised by participants.
Reject Topic	Percentage of total strategies that meet the following definitions: A comment by the mediator which focuses on eliminating a topic from conversation.
Ask for Solutions/Brainstorm	Percentage of total strategies that meet the following definitions: Any question in which a mediator: • asks participants for a suggestion or solution to the conflict. • asks participants to describe what they think or plan to have happen in any particular future scenario. • attempts to get specifics related to a possible solution (open-ended question), or asks for some kind of clarification about the suggestion. These questions would be who, what, when, where, how as follow-ups to a participant solution, without introducing a new direction. • asks participants for solutions using a plural -- implying asking for more than one possibility. • asks participants to select solutions out of a range that they have identified. Any procedural description of the brainstorming process.
Summarize Solutions	Percentage of total strategies that meet the following definitions: Any statement in which a mediator: • verbally summarizes the solutions the participants have suggested. • summarizes all of the ideas the participants have considered or are considering. • summarizes agreements participants have made. Any action by the mediator involving listing the possible solutions. The act of handing participants a written agreement.
Suggestion Question	Percentage of total strategies that meet the following definitions: Any question in which a mediator: • suggests a solution to the problem. • steers participants towards a particular type of solution • steers participants towards mediation guidelines or in a particular direction for the mediation process itself.
Negotiation Question	Percentage of total strategies that meet the following definitions: Questions that encourage positional negotiation and splitting the difference. These generally use compromise language or language that assumes trade-offs.
Mediator Solution	Percentage of total strategies that meet the following definitions: Any statement in which the mediator promotes a solution that did not come from the participants.
Request Reaction	Percentage of total strategies that meet the following definitions: Any question in which a mediator asks participants for their thoughts on a

Variable	Definition or Question Text
	specific suggestion of a solution to the conflict that was made by one of the participants. Any comment after a mediator has summarized a set of items participants have agreed to and asks participants if that will take care of the situation. Any reflection of participants' assessment with a questioning tone or a question attached to it, if the goal is to confirm that status of the possibility. Any comment in which a mediator asks participants to consider a list of possibilities and identify which ideas they want to remove from the lists.
Legal Assessment	Percentage of total strategies that meet the following definitions: Any statement in which the mediator: • makes a prediction about what might occur in court. • evaluates the strengths and weaknesses of the participants' case. • instructs participants with legal information or asks questions which provide information about a legal situation.
Percent Time – Caucus	Percentage of total ADR time spent in caucus session

Next we report on two separate studies conducted with this data. The first analyzes the short-term impacts of the various mediation strategies. The second analyzes longer term impacts.

Study #1: Immediate (Short-Term) Impact of Mediation Strategies

Summary Statistics

Tables 2 - 4 provide the summary statistics for the variables included in this analysis. Table 2 provides summaries for variables examined for each participant. Tables 3 and 4 examine each case, with Table 3 summarizing the percentage of cases reaching agreements and consent orders, and Table 4 summarizing each variable examined for each case.

Table 2. Summary Statistics for Each Variable – Data by Participant

Variable	N	Freq.	Percent	Range	Mean (SD)
Case Characteristics					
Agreement (no, partial, yes)	270			0 to 2	1.06 (0.94)
Police Called	270	84	31%		
Total Time	270			7 to 447	107.17 (77.53)
Pre-Test Attitudinal Measures of Agreement (5) or Disagreement (1)					
Feel Prepared	266			1 to 5	3.73 (1.01)
Prefer Trial	262			1 to 5	2.23(1.07)
Hope to Resolve	267			2 to 5	4.46 (0.65)
Feel Pressure	266			1 to 5	2.32(1.14)
Waste of Time	267			1 to 5	2.04 (0.91)
Clear Idea	266			1 to 5	4.19 (0.78)
Know Role Mediator	266			1 to 5	3.85 (0.81)
Know Rights	263			1 to 5	3.84 (0.85)
Know Procedures	263			1 to 5	3.35 (1.08)
Prepared for Trial (no, not sure, yes)	262			0 to 2	1.31 (0.93)
Prepared for Mediation (no, not sure, yes)	264			0 to 2	1.27 (0.94)
Participant Characteristics					
Represented or Consult		178	64%		
No Prior ADR		195	70%		
Parenting Class		210	80%		
Male		133	50%		
Age	267			19 to 70	35.44 (8.47)
White		147	56%		
Post-Test Attitudinal Measures of Agreement (5) or Disagreement (1)					
Mediator Listened	261			1 to 5	4.45 (0.63)
Mediator Took Sides	261			1 to 5	1.76 (0.72)
Mediator Respected	260			2 to 5	4.45 (0.52)
I Could Express	261			1 to 5	4.25 (0.67)
Mediator Understood	261			2 to 5	4.23 (0.58)
I Became Clear	261			1 to 5	3.97 (0.88)

Variable	N	Freq.	Percent	Range	Mean (SD)
I Understand Other	260			1 to 5	3.24 (1.18)
Other Understands Me	261			1 to 5	2.99 (1.15)
Mediator Prevented Topics	259			1 to 5	1.92 (0.80)
Other Listened	260			1 to 5	3.22 (1.12)
Mediator Pressured	260			1 to 5	1.81 (0.68)
We Controlled	258			1 to 5	3.75 (0.92)
Mediator Controlled	260			1 to 5	1.92 (0.68)
Reuse Mediation	259			1 to 5	3.64 (0.98)
Recommend Mediation	261			1 to 5	4.03 (0.77)
Satisfied Outcome	261			1 to 5	3.35 (1.15)
Satisfied Process	261			1 to 5	3.90 (0.76)
Issues Resolved (no, partially, yes)	250			0 to 2	0.91 (0.87)
Outcome Fair	175			1 to 5	3.96 (0.83)
Can Implement	173			2 to 5	4.14 (0.60)
Child's Needs Met	171			1 to 5	3.99 (0.85)
Satisfied Judiciary	260			1 to 5	3.56 (0.95)
Difference in Level of Agreement or Disagreement from Before to After Intervention (Positive represents an increase in agreement)					
Difference-Number of Ways	252			-4 to 4	-0.10 (1.08)
Difference-Child's Needs	255			-2 to 2	-0.15 (0.48)
Difference-My Needs	255			-4 to 3	-0.17 (0.81)
Difference-Important to Understand Other	256			-3 to 3	-0.02 (0.74)
Difference-Learn Wrong	253			-3 to 3	-0.29 (0.95)
Difference-Their Needs	253			-4 to 3	-0.10 (0.83)
Difference-Positive Relationship	254			-3 to 4	-0.09 (0.72)
Difference-No Control	251			-4 to 3	-0.24 (1.33)
Difference-Wants Opposite	250			-4 to 3	-0.33 (1.14)
Difference-Can Talk Concerns	254			-4 to 3	0.20 (1.10)
Difference-No Difference	251			-3 to 4	-0.20 (1.27)
Difference-Conflict Negative	254			-4 to 2	-0.16 (0.85)
Difference-Court Cares	250			-2 to 4	0.24 (0.76)
Difference-Children Doing Well	249			-3 to 4	0.18 (0.91)
Difference-I Can Decide	255			-3 to 3	-0.09 (0.73)
Difference-Other Parent Can Decide	255			-3 to 3	0.11 (0.87)
Difference-We Can Decide	251			-3 to 3	0.22 (1.02)
Difference-Work As Team	250			-2 to 4	0.37 (0.96)
Participant Codes					
Interrupt	270			0 to .2093	0.01 (.03)
Wrong	270			0 to .6842	0.25 (.14)
Put Down	270			0 to .1301	0.02 (.03)
Need/Want/Feel	270			0 to .6154	0.19 (.09)

Variable	N	Freq.	Percent	Range	Mean (SD)
Care/Appreciate	270			0 to 0.18	0.02 (0.03)
Question	270			0 to 0.22	0.07 (0.04)
Responsibility/Apology	270			0 to 0.08	0.01 (0.01)
Participant Solution	270			0.05 to 0.59	0.29 (0.10)
Accept Solution	270			0 to 0.69	0.11 (0.10)
Reject Solution	270			0 to 0.19	0.02 (0.02)
Silence	270			0 to 0.11	0.00 (0.01)
Process Complaint	270			0 to 0.02	0.00 (0.00)
Responsibility/Wrong	270			0 to 0.17	0.01 (0.02)
Mediator Characteristics					
Mediator Matches Gender		150	59%		
Number of Cases – 12 months	260			14 to 350	150.66 (97.06)
MPME Member		225	83%		
Mediator Style	270				
Evaluative		4	2%		
Facilitative		130	50%		
Transformative		0	0%		
Analytical		0	0%		
Narrative		0	0%		
Inclusive		72	27%		
No Style		46	17%		
Mediator Codes					
Reflections	270			0.02 to 0.39	0.18 (0.09)
Emotions	270			0 to 0.26	0.04 (0.06)
Interests	270			0 to 0.16	0.02 (0.03)
Open Question	270			0 to 0.26	0.05 (0.04)
Fact Question	270			0.02 to 0.41	0.13 (0.08)
Summary of Facts	270			0 to 0.01	0.00 (0.00)
Mediator Opinion	270			0.02 to 0.61	0.14 (0.09)
Advocate/Support	270			0 to 0.04	0.00 (0.01)
Behavioral Direction	270			0 to 0.13	0.01 (0.02)
Common Ground	270			0 to 0.07	0.01 (0.01)
Explain	270			0 to 0.09	0.01 (0.02)
Focus/Narrow	270			0 to 0.06	0.01 (0.01)
Introduce Topic	270			0 to 0.09	0.01 (0.02)
Reject Topic	270			0 to 0.25	0.01 (0.02)
Ask for Solutions/Brainstorm	270			0 to 0.40	0.11 (0.06)
Summarize Solutions	270			0 to 0.52	0.13 (0.09)
Suggestion Question	270			0 to 0.11	0.02 (0.02)
Negotiation Question	270			0 to 0.02	0.00 (0.00)

Variable	N	Freq.	Percent	Range	Mean (SD)
Mediator Solution	270			0 to 0.23	0.06 (0.04)
Request Reaction	270			0 to 0.12	0.03 (0.02)
Legal Assessment	270			0.01 to 0.19	0.05 (0.03)
Percent Time – Caucus	270			0 to 0.69	0.02 (0.08)

Table 3. Percentage of Cases Reaching Agreements and Consent Orders

Outcome	None	Partial	Full	Total
Mediated Agreement	54 (40%)	16 (12%)	64 (48%)	134
Consent Order	18 (14%)	4 (3%)	105 (83%)	127

Table 4. Summary Statistics for Each Variable – Data by Case

Variable	N	Freq.	Percent	Range	Mean (SD)
Agreement	133			0 to 2	1.04 (0.95)
Consent Order	127			0 to 2	1.69 (0.71)
Post Mediation Progress	127			0 to 2	0.62 (0.90)
Personalization of Agreement	76			0 to 7	2.43 (1.70)
Number Children	126			0 to 4	1.49 (0.77)
Police Called		41	31%		
Mediator MPME Member		112	84%		
Mediator Gender – Male		45	34%		
Parenting Class		107	80%		
Percent Caucus	134			0 to 0.69	0.08(0.02)
Number Cases – 12 months	129			14 to 350	151.2 (97.41)
Related Case		34	25%		
Need Agreement	130			1 to 4	1.67 (0.67)
Location Convenient	134			1.5 to 5	3.70 (0.78)
Age	134			19 to 59	35.45 (7.66)
White		48	35%		
Attorney – consult or represented (by either or both participants in the case)		85	63%		

Creating New Combined Variables

Two data analysis techniques (principal component analysis and factor analysis) were used to create new variables that combine the various variables measuring similar concepts. Factor analysis was used to consider the combination of mediator behavior variables based on the idea that mediators have some underlying theory holding together their philosophies and actions that can be identified through factor analysis. Principal component analysis was used to combine the various sets of participant variables with the idea that while there may be patterns

connecting the variables, there was no specific underlying theory being used by participants that would tie their answers together in a potentially predictable way.

For both factor analysis and principal component analysis, the minimum Eigen value was set at 1, and varimax was used for the factor matrix rotation. The outputs were reviewed with settings to report loadings greater than 0.4 and determined to be either consistent with theory or at least not totally inconsistent with theory or conventional wisdom. New variables were created using the factor loadings associated with each of the variables. The new variables are defined in Tables 5 - 10 below. The factor loadings for each of the new variables can be found in Appendix C, with the loading listed for any value greater than 0.3. Loadings greater than 0.3 (rather than the 0.4 threshold) are used in this report to create a more comprehensive understanding of the newly created variables.

The new variables are listed across the top of the following tables[3], with the variables that comprise them listed below. The new variable combinations are the same for participant level data and case level data, with the exception of participant codes. Table 6 defines the new variables created for participant behaviors for the participant level data, and Table 7 defines the new variables for participant behaviors for the case level data.

Table 5. Attitudes Prior to Mediation

P Knowledge	P Want Trial	P Prepared
"I feel prepared for a possible trial." (+ 0.35)	"I would prefer that we go to trial instead of being in mediation today." (+0.51)	"I feel prepared for a possible trial." (+0.45)
"I have a clear idea of what I want to get from today's mediation." (+0.37)	"I hope we can resolve this case in mediation." (-0.35)	"Have you done anything to prepare for a possible trial in this case" (+0.85)
"I have a clear idea of what a mediator does." (+0.43)	"I feel pressure to participate in this mediation." (+0.52)	
"I know my legal rights as it pertains to this case." (+0.50)	"I believe mediation to be a waste of time." (+0.56)	
"I am aware of court procedures related to cases of custody and visitation." (+0.50)		

[3] For Tables 5 to 10, variables with "P" refer to participant data; variables noted with "Diff" are difference scores from short- to long-term. Variables with "M" refer to participants' opinions about the mediator.

Table 6. Participant Codes Spoken During Mediation – Participant Data Set Only

P Options	P Care Need	P Won't Work	P Not Engaged
Wrong (-0.56)	Need / Want / Feel (+0.56)	Need / Want / Feel (-0.32)	Process Complaint (+0.63)
Put Down (-0.46)	Care / Appreciate (+0.46)	Care / Appreciate (+0.31)	Silence (+0.74)
Participant Solution (+0.46)	Responsibility / Apology (+0.57)	Responsibility / Wrong (-0.77)	
Accept Solution (+0.42)		Reject solution (+0.36)	

Table 7. Participant Codes Spoken During Mediation – Case Data Set only (created by combining the codes used by both participants in the case)

Joint Participant Options	Joint Participant Engaged	Joint Participant Acknowledge	Joint Participant Not Engaged
Wrong (-0.52)	Need / Want / Feel (+0.65)	Care / Appreciated (+0.37)	Process Complaint (+0.43)
Put Down (-0.44)	Responsibility / Wrong (+0.58)	Responsibility / Apology (+0.67)	Silence (+0.86)
Participant Solution (+ 0.49)		Reject Solution (-0.52)	
Accept Solution (+0.42)			

Table 8. Participant Experience During Mediation (Asked post-mediation)

P M No Respect	P Understand / Listen	P Recommend / Satisfied	P Clear Understand
"The mediator listened to what I had to say without judging me or my ideas." (-0.4003)	"Through the mediation, I think I understand the other person/people involved in this conflict better." (+0.43)	"I would recommend mediation to others involved in conflict." (+0.51)	"I was able to express myself, my thoughts, and my concerns during the mediation." (+0.33)

P M No Respect	P Understand / Listen	P Recommend / Satisfied	P Clear Understand
"The mediator seemed to take sides" (+0.43)	"Through the mediation, I think the other person/people involved in the conflict understand me better." (+0.42)	"I am satisfied with the *process* of the mediation." (+0.40)	"I think the mediator understood what I was expressing." (+0.47)
"The mediator treated me with respect." (-0.37)	"The other person listened to me." (+0.45)	"I am satisfied with my interactions with the judicial system during this case." (+0.64)	"Through mediation, I became clearer about what I want with regard to custody and visitation." (+0.41)
"The mediator prevented us from talking about important topics." (+0.35)	"Together, the other person and I controlled the decisions made in the mediation." (+0.38)		"I think all of the underlying issues in the conflict came out in the mediation." (+0.47)
"I feel like the mediator controlled the decisions made in the mediation." (+0.31)			

Table 9. Outcomes: Difference in Perspective from Before to After Mediation[4]

P Diff Hopeless	P Diff Our Needs	P Diff Other Doesn't Matter	P Diff Child Focus	P Diff Together Options
"I feel like I have no control over what happens in our issues related to custody and visitation." (+0.53)	"It's important that I get my needs met in our issues related to custody and/or visitation." (+0.69)	"It's important that I understand what the other person/people want related to custody and/or visitation." (-0.38)	"It's important that our children's needs are met in our issues related to custody and/or visitation." (+0.65)	"I think there are a number of different ways to resolve our issues related to custody and/or visitation." (+0.69)
"The other person involved	It's important that the other	"The other person needs to	"It's important that I understand	"We are able to make decisions

[4] Positive scores represent an increase in agreement.

P Diff Hopeless	P Diff Our Needs	P Diff Other Doesn't Matter	P Diff Child Focus	P Diff Together Options
in this custody dispute wants the exact opposite of what I want." (+0.38)	person/people get their needs met in our issues related to custody and/or visitation." (+0.61)	learn that they are wrong, regarding our issues of custody and/or visitation." (+0.74)	what the other person/people want related to custody and/or visitation." (+0.31)	together that are in the best interest of our children." (+0.36)
"I can talk about my concerns with to the other person/people involved in our issues related to custody and/or visitation." (-0.42)		"It's important for me to have a positive relationship with the other person involved in our issues related to custody and visitation." (-0.40)	"In general, conflict is a negative thing." (+0.53)	"We work well together as a team when it comes to raising our children." (+0.45)
"It doesn't seem to make any difference what I do in regard to our issues related to custody and/or visitation, it'll just remain the same" (+0.50)				

Table 10. Mediator Strategies Employed During Mediation and Self-Reported Style

Mediator Reflecting	Mediator Offering Perspectives	Mediator Eliciting Participant Solutions	Mediator Directing
Emotions (+ 0.79)	Reflections (-0.58)	Open Question (-0.37)	Mediator Opinion (+0.30)
Interests (+ 0.84)	Fact Question (+0.32)	Fact Question (-0.49)	Advocate/Support (+0.66)
Fact Question (-0.34)	Mediator Opinion (+0.57)	Ask for Solution / Brainstorm (+0.80)	Behavioral Direction (+0.53)
Mediator Opinion (-0.39)	Introduce Topic (+0.42)	Summarize Solutions (+0.84)	Explain (+0.59)
Common Ground (+0.35)	Mediation Solution (+0.36)	Request Reaction (+0.65)	Style – Evaluative (+0.61)

Mediator Reflecting	Mediator Offering Perspectives	Mediator Eliciting Participant Solutions	Mediator Directing
Explain (-0.34)	Legal Assess (+0.37)	Legal Assessment (-0.36)	
Focus/Narrow (+0.49)	Style – Facilitative (-0.53)		
Suggestion Question (-0.49)	Style – None (+0.78)		
Mediator Solution (-0.38)			
Style – Facilitative (-0.70)			
Style – Inclusive (+0.94)			

The factor analysis of mediator codes led to four sets of strategies. The first set is titled "Mediator Reflecting" since the strategies include heavy use of reflecting back the participants emotions and interests, as well as clarifying with participants the topics they want to work on. This set of strategies is characterized by negative loadings on the strategies which include a mediator telling participants their ideas and solutions. The factor loading on "Inclusive" indicates that mediators who identified themselves as inclusive mediators were found to be using these strategies more often than other strategies.

The second set is titled "Mediator Offering Perspective" and is characterized by strategies that involve the mediator sharing their ideas about the situation, such as their opinion, their ideas about what topics participants should discuss, their suggestions and ideas, and their advocacy for perspectives coming from either or both participants. The negative loading on Reflections, indicates that the strategy of reflecting back what participants were saying was not generally used with the strategies of mediators offering their perspective.

The third set is titled "Mediator Eliciting Participant Solutions" and is characterized by mediator strategies that involve asking participants what solutions they would suggest, summarizing those solutions, and checking in with participants to see how they think those ideas might work for them.

The fourth set is titled "Mediator Directing" and is characterized by strategies that involve the mediator directing the flow of the conversation. These strategies include introducing and enforcing guidelines for behavior, explaining one participant's position to the other, as well as providing their opinion and advocacy for one participant or the other. The factor loading on "evaluative" indicates that mediators who identified themselves as evaluative mediators were found using these strategies more often than others; however, it is worth noting that only 2% of the mediations were conducted by mediators who considered themselves evaluative mediators, so the connection to that label itself may or may not be important.

Although factor analysis allows us to identify sets of strategies used together, and the subsequently created variables allow us to measure the impact of those sets of strategies, it is important to understand that these sets of strategies are not necessarily identifying types of mediators or mediation models. One also cannot assume that one mediator used only one set of strategies in any given mediation. So although we can say that a given strategy has a particular impact and another strategy has a different impact, one mediator may have used both types of strategies in the same mediation. For example, we may see Mediator Reflecting and Mediator Eliciting Participant Solutions or Mediator Offering Perspectives and Mediator Eliciting Participant Solutions together in the same mediation. However, we may not often see Mediator Reflecting and Mediator Offering Perspectives together, since several behaviors load positively on one factor and load negatively on the other.

These new variables measure the percentage of the mediator strategies that fit in the set of strategies. As such, a positive coefficient on these variables indicates that a greater use of these strategies increases the outcome of interest, while a negative coefficient indicates that the greater use of these strategies decreases the outcome of interest.

Building the Model

The primary goal of this portion of the research is to understand the impact of mediator strategies and experience on a range of short-term outcomes, including agreement rates, consent order rates, and participants' attitude toward the other participant, the situation, and the mediation experience. In order to isolate the impact of mediator strategies and experience, we use ordinary least squares multiple regression analysis and ordered logistical regression analysis. Through this, we seek to control for other factors that may affect participants' experience. We include several measures of participant attitude, participant actions (as measured through behavior coding), whether participants are represented or consulted counsel, whether the police were called in the past in the case (as a measure of escalation), participant demographics (age, gender, race), whether participants attended a parenting class prior to attending mediation, and whether the mediator's gender matched the participant's gender.

Several models were considered. In order to avoid problems associated with multi-collinearity, correlation tables were reviewed for each possible set of independent variables, with the goal of only including variables in the equations if the correlation between them was less than 0.5. For those variable pairs with a correlation coefficient of 0.5 or greater, the variable that was considered more central to the analysis was kept. Before discarding the other variable, however, the equation was run with that variable in order to see if it was significant. If it was not, then it was not used and the more key variable was used.

In addition, variables with several missing observations were removed, as the data set already has a lower number of observations than desired.

For all participant level data, whether or not the participants reached an agreement in the mediation was also included in the equation. This allows us to hold constant for whether or not an agreement was reached and isolate the impact of the other variables on the outcomes of interest, whether or not an agreement was reached.

Results

Participant level outcomes

Table 11 below reports the results of the Ordinary Least Squares Regressions for post-mediation variables.

Table 11. Ordinary Least Squares Regression Results for Post-Intervention Measures[5]

		P No Respect	P Understand/ Listen	P Recommend /Satisfied	P Clear Understand
	Agreement	-0.17 (-0.92)	1.02** (6.58)	0.34** (2.61)	0.58** (4.62)
Case Characteristics	Police Called	-0.07 (-0.25)	-0.33 (-1.30)	-0.21 (-1.00)	0.32 (1.57)
	Represented or Consult	0.12 (0.39)	-0.07 -0.26	-0.29 (-1.34)	-0.02 (-0.08)
	Parenting Class	0.26 (0.70)	-0.10 (-0.32)	0.21 (0.81)	-0.55* (-2.20)
Participant Attitude	Participant Knowledge	-0.21* (-2.28)	0.10 (1.20)	0.13* (1.98)	0.09 (1.45)
	Participant Want Trial	0.19* (2.12)	-0.03 (-0.38)	-0.13* (-1.97)	-0.02 (-0.32)
	Participant Prepared	0.02 (0.13)	-0.11 (-0.91)	-0.14 (-1.39)	-0.07 (-0.77)
Participant Strategies	Participant Care Need	-0.21 (-1.81)	0.24* (2.47)	0.05 (0.57)	0.07 (0.83)
	Participant Won't Work	0.02 (0.13)	0.03 (0.32)	-0.11 (-1.24)	0.05 (0.59)
	Participant Not Engaged	-0.00 (-0.04)	-0.18 (-1.80)	-0.07 (-0.86)	-0.14 (-1.75)
Mediator Strategies	Mediator Reflecting	-0.68 (-0.38)	0.37* (2.51)	-0.01 (-0.11)	0.04 (0.30)
	Mediator Offering Perspectives	-0.03 (-0.22)	-0.00 (-0.00)	-0.03 (-0.30)	0.10 (1.03)
	Mediator Eliciting Participant Solutions	-0.34 (-1.87)	0.48** (3.12)	0.17 (1.31)	0.27* (2.21)

[5] Variables noted with a "P" refer to participant data.

		P No Respect	P Understand/ Listen	P Recommend /Satisfied	P Clear Understand
	Mediator Directing	0.37* (2.15)	-0.14 (-0.98)	0.00 (0.02)	-0.05 (-0.43)
	Percent Caucus	-3.90* (-2.16)	-1.05 (-0.69)	-0.09 (-0.07)	1.00 (0.81)
	Mediator Number Cases – 12 months	-0.00 (-0.71)	-0.00 (-0.97)	0.00 (0.07)	-0.00 (-0.67)
Participant Demographics	Gender	0.03 (0.11)	0.40 (1.69)	-0.06 (-0.31)	-0.06 (-0.30)
	Age	-0.02 (-1.09)	-0.02 (-1.47)	0.00 (0.17)	0.01 (1.28)
	White	-0.48 (-1.77)	0.15 (0.64)	0.28 (1.45)	-0.24 (-1.33)
	Match My Gender	0.17 (0.61)	-0.18 (-0.76)	-0.15 (-.075)	-0.31 (-1.62)
	Constant	0.82 (1.00)	-0.18 (-0.27)	-0.37 (-0.64)	-0.24 (-0.43)
	Number of Observations	206	206	206	206
	Adjusted R^2	0.10	0.37	0.13	0.27

* Significant at p<.05 ** Significant at p<.01

In terms of participants' experience that the mediator respected them and did not take sides:

- The greater the percentage of directing strategies the mediator employed, the less likely the participant was to indicate that the mediator respected them and did not take sides.
- The greater the percentage of time that the mediator spent in caucus, the more likely the participant was to indicate that the mediator respected them and did not take sides.
- Participants' sense of knowledge about mediation and the court process also had a positive effect on their likelihood of reporting that the mediator respected them and did not take sides.

In terms of participants' experience that through mediation the participants listened to each other, built understanding, and controlled decisions:

- Reaching an agreement or partial agreement had a positive effect on participants reporting listening to each other and increasing understanding.
- The greater the percentage of reflecting strategies the mediator employed, the more likely the participant was to indicate that participants listened to and increased understanding through the process.

- ❖ The greater percentage of strategies seeking solutions and reactions from participants that the mediator employed, the more likely the participant was to indicate that participants listened to and increased understanding through the process.

In regard to participants reporting satisfaction with the process and outcome, and likelihood of reusing and recommending mediation:

- ❖ Reaching an agreement or partial agreement had a positive effect on participants reporting satisfaction and likelihood of reusing mediation.
- ❖ Participants' pre-mediation expression of preference for trial and sense of mediation as a waste of time had a negative effect on participants reporting satisfaction and likelihood of reusing mediation.

In regard to participants reporting that, through mediation, they became clearer about their desires and that the underlying issues came out:

- ❖ Reaching an agreement or partial agreement had a positive effect on participants reporting that they became clearer about their desires and that the underlying issues came out.
- ❖ The greater percentage of strategies seeking solutions and reactions from participants that the mediator employed, the more likely the participant was to indicate that they became clearer about their desires and that the underlying issues came out.
- ❖ Participants who attended the parenting class were less likely to indicate that they became clearer about their desires and the underlying issues came out.

Table 12 below reports the results of the Ordinary Least Squares Regressions, analyzing the difference in attitudes from before to after the mediation:

Table 12. Ordinary Least Squares Regression Results for Differences in Attitudes[6]

		P Diff Hopeless	P Diff Our Needs	P Diff Other Doesn't Matter	P Diff Child Focus	P Diff Together Options
	Agreement	-0.65** (-4.74)	0.13 (1.11)	-0.42** (-3.48)	0.26* (2.28)	0.20 (1.70)
Case cl	Police Called	-0.09 (-0.39)	-0.24 (-1.31)	0.21 (1.07)	0.17 (0.89)	-0.03 (-0.15)

[6] Variables with a "P" refer to participant data and variables noted with "Diff" are difference scores from short- to long-term.

		P Diff Hopeless	P Diff Our Needs	P Diff Other Doesn't Matter	P Diff Child Focus	P Diff Together Options
	Represented or Consult	0.17 (0.74)	-0.27 (-1.40)	0.27 (1.35)	-0.18 (-0.94)	0.14 (0.71)
	Parenting Class	0.11 (0.40)	-0.02 (-0.09)	0.15 (0.65)	-0.12 (-0.51)	0.26 (1.14)
Participant Attitude	Participant Knowledge	0.12 (1.70)	-0.09 (-1.51)	0.06 (0.89)	0.01 (0.08)	0.00 (0.07)
	Participant Want Trial	-0.03 (-0.35)	0.01 (.20)	-0.04 (-0.64)	0.00 (0.07)	0.02 (0.30)
	Participant Prepared	-0.17 (-1.65)	-0.12 (-1.36)	-0.16 (-1.76)	0.02 (0.24)	0.06 (0.67)
Participant Strategies	Participant Care Need	-0.12 (-1.38)	0.16* (2.20)	0.02 (0.30)	0.13 (1.83)	-0.09 (-1.20)
	Participant Won't Work	0.08 (0.84)	-0.06 (-0.73)	-0.08 (-1.00)	0.11 (1.38)	0.01 (0.18)
	Participant Not Engaged	0.07 (0.76)	-0.12 (-1.65)	0.02 (0.26)	-0.14 (-1.87)	-0.10 (-1.33)
Mediator Strategies	Mediator Reflecting	-0.13 (-0.97)	-0.11 (-1.01)	-0.33** (-2.84)	0.02 (0.17)	0.26* (2.37)
	Mediator Offering Perspectives	-0.04 (-0.39)	0.11 (1.20)	0.15 (1.55)	-0.12 (-1.28)	0.06 (0.60)
	Mediator Eliciting Participant Solutions	-0.23 (-1.83)	0.16 (1.54)	0.09 (0.81)	-0.16 (-1.49)	0.33** (3.06)
	Mediator Directing	-0.09 (-0.67)	-0.13 (-1.22)	0.16 (1.47)	0.18 (1.71)	-0.06 -(0.61)
	Percent Caucus	2.67* (2.04)	0.18 (0.17)	0.02 (0.01)	-0.82 (-0.75)	-2.55* (-2.33)
	Mediator Number Cases - 12 months	0.00 (0.45)	-0.00* (-2.45)	-0.00 (-1.10)	0.00 (0.13)	0.00 (0.82)
Participant Demographics	Male	-0.24 (-1.13)	0.19 (1.08)	0.04 (0.20)	0.00 (0.01)	-0.15 (-0.84)
	Age	0.01 (0.81)	-0.00 (-0.18)	-0.00 (-0.72)	0.01 (0.69)	0.01 (0.67)
	White	0.17 (0.83)	-0.05 (-0.30)	0.19 (1.10)	0.02 (0.13)	-0.02 (-0.15)
	Match My Gender	-0.15 (-0.68)	-0.17 (-0.95)	0.16 (0.84)	-0.18 (-1.02)	0.19 (1.07)
	Constant	0.22 (0.36)	0.57 (1.13)	0.36 (0.67)	-0.20 (-0.38)	-0.88 (-1.74)
	Number of Observations	191	191	191	191	191
	Adjusted R^2	0.20	0.10	0.44	0.04	0.16

* Significant at p<.05 ** Significant at p<.01

In regard to participants' reports of hopelessness: Reaching an agreement or partial agreement had a positive effect on participants feeling less hopelessness after than before the mediation.

- The greater the percentage of time spent in caucus, the more likely participants were to increase their sense of hopelessness from before to after the mediation.

None of the mediator strategies had a significant impact on the participants' shift in attitude about getting their and the other participants' needs met.

In regard to participants' belief that the other person needs to learn they are wrong and in their desire to understand the other participants:

- Reaching an agreement or partial agreement had a negative effect on participants dismissing the other participants' needs and perspectives.
- The greater percentage of reflecting strategies the mediator used, the less likely participants were to dismiss the other participants' perspectives.

None of the mediator strategies had a significant impact on the participants' change in belief that it's important to focus on the children's needs and that conflict is generally negative.

In terms of the participants' belief that they could work together to resolve their conflicts with a range of options:

- The greater the percentage of reflecting strategies the mediator used, the more likely the participants were to show an increase in the belief they could work together to resolve their conflicts with a range of options.
- The greater the percentage of strategies seeking solutions and reactions from participants that the mediator employed, the more likely the participants were to show an increase in the belief they could work together to resolve their conflicts with a range of options.
- The greater the percentage of time spent in caucus, the less likely the participants were show an increase in the belief they could work together to resolve their conflicts with a range of options.

Similar analysis was also conducted to determine the impact of mediator strategies on participants' report that the issues were resolved; and, for cases that reached agreement or partial agreement, on participants' report that the outcome was fair, that they could implement the outcome, and that the child's needs were met. No mediator strategies had a statistically significant impact on these outcomes. The results of these regression analyses can be found in Appendix B.

Case Level Outcomes

Table 13 below reports the results of the Ordered Logistical Regressions of case level data in terms of how the variables of interest affect reaching an agreement, reaching a consent order, progress between mediation and a consent order, and the personalization of the agreement.

Table 13. Ordinary Least Squares Regression Results for Outcome Measures by Case

		Agreement	Agreement (testing interactive effect)	Consent Order	Post-Mediation Progress	Personalization of Agreement
Mediator Strategies	Percent Caucus	-1.50 (-0.21)	-0.98 (-0.02)	3.22 (0.42)	1.17 (0.30)	5.80 (1.30)
	Mediator Reflecting	-0.80* (-2.40)	-0.79* (-2.45)	-0.61 (-1.22)	0.30 (1.06)	4.44** (5.15)
	Mediator Offering Perspectives	0.26 (0.66)	0.21 (0.51)	0.81 (1.29)	0.13 (0.36)	0.44 (1.07)
	Mediator Directing	-0.11 (-0.32)	-0.13 (-0.40)	-0.38 (-0.82)	-0.08 (-0.26)	0.67 (1.71)
	Mediator Eliciting Participant Solutions	1.65** (4.16)	1.97** (4.45)	1.64** (3.17)	-0.45 (-1.69)	0.62 (1.15)
	Mediator Reflect * Mediator Elicit		-0.70 (-2.06)			
Mediator Characteristics	MPME	-1.71 (-1.50)	-1.34 (-1.23)	-0.29 (-0.20)	1.25 (1.14)	3.23* (2.23)
	Mediator gender male	0.40 (0.56)	0.09 (0.12)	0.77 (0.77)	0.60 (0.90)	-2.73** (-2.69)
	Mediator Number Cases – 12 months	0.00 (0.52)	0.00 (0.55)	-0.00 (-0.22)	-0.00 (-1.46)	0.00 (0.57)
	Need Agreement	-0.02 (-0.04)	0.20 (0.38)	-0.40 (-0.48)	-0.29 (-0.62)	1.80** (3.31)
Participant Attitude	Participant wants trial	-0.22 (-1.21)	-0.18 (-0.95)	-0.07 (-0.27)	0.30 1.77	0.38 (1.69)
	Participant Prepared	0.07 (0.27)	0.14 (0.49)	-0.56 (-1.38)	-0.14 (-0.60)	-0.08 (-.025)
	Participant Knowledge	-0.16 (-0.84)	-0.19 (-0.97)	0.71* (2.33)	0.43* (2.25)	-0.11 (-0.43)
Participant Strategies	Joint Participant options	0.14 (0.85)	0.19 (1.07)	-0.04 (-0.14)	-0.00 (-0.03)	-0.08 (-0.42)
	Joint Participant Not engaged	-0.45 (-1.33)	-0.38 (-1.22)	0.35 (0.75)	0.31 (1.39)	0.26 (0.51)
	Joint Participant engaged	0.19 (0.79)	0.22 (0.89)	1.34** (2.64)	0.58** (2.55)	-0.77* (-2.02)

		Agreement	Agreement (testing interactive effect)	Consent Order	Post-Mediation Progress	Personalization of Agreement
	Joint Participant Acknowledge	0.01 (0.06)	0.06 (0.26)	0.02 (0.06)	-0.14 (-0.66)	-0.04 (-0.16)
Participant Characteristics	Number of children	0.06 (0.16)	-0.01 (-.03)	0.94 (1.45)	0.16 (0.46)	-0.03 (-0.07)
	Age	0.04 (1.18)	0.05 (1.34)	0.01 (0.16)	-0.03 (-1.16)	-0.10* (-2.15)
	White	1.30 (1.57)	1.29 (1.54)	2.70* (2.19)	0.39 (0.53)	3.15** (3.04)
Case Characteristics	Police Called	0.62 (0.98)	0.97 (1.47)	-1.62 (-1.86)	-1.14* (-2.00)	1.72* (2.03)
	Parenting Class	-1.21 (-1.25)	-0.98 (1.01)	0.08 (0.06)	1.73 (1.82)	4.16** (3.09)
	Related case	-0.96 (-1.20)	-1.17 (-1.45)	1.31 (0.97)	0.73 (1.06)	-0.85 (-0.90)
	Attorney – consult or represented	-1.15 (-1.47)	-1.42 (-1.79)	0.96 (0.96)	1.07 (1.52)	-0.91 (-1.02)
	Location Convenience	1.14** (2.95)	1.17** (2.97)	-0.31 (-0.60)	-0.51 (-1.51)	0.17 (0.39)
	Number Observations	116	116	110	110	66
	Pseudo R^2	0.34	0.35	0.33	0.20	0.44

* Significant at p<.05 ** Significant at p<.01

In regard to cases reaching agreement:

- The greater the percentage of reflecting strategies the mediator used, the less likely the case was to reach an agreement.
- The greater the percentage of strategies seeking solutions and reactions from participants that the mediator employed, the more likely the case was to reach an agreement.
- The participants' sense that the location in which the mediation occurred was convenient also made it more likely that they would reach an agreement.

In regard to cases ending up with a consent order:

- The greater the percentage of strategies seeking solutions and reactions from participants that the mediator employed, the more likely the case was to result in a consent order.
- Although the percentage of reflecting strategies had a negative effect on reaching an agreement, it did not have a significant effect on reaching a consent order.
- Participant strategies of engagement with each other, such as expressing their needs and taking joint responsibility, resulted in cases being more likely to reach a consent order.

- Participants' pre-mediation knowledge of the court and mediation process resulted in cases being more likely to reach a consent order.
- Participants' race was also significant, with white participants more likely to reach a consent order than non-white participants.

In regard to progress between the mediation and the consent order stage:

- No mediator strategy set had a significant impact on progress from agreement to consent order.
- Participant strategies of engagement with each other, such as expressing their needs and taking joint responsibility, resulted in participants being more likely to move from having no agreement or a partial agreement to getting a partial or full consent order.
- Participants' pre-mediation knowledge of the court and mediation process resulted in participants being more likely to move from having no agreement or a partial agreement to getting a partial or full consent order.
- If the police had been called before the mediation, participants were more likely to get an agreement in mediation that did not result in a consent order.

For those cases that reached an agreement, the agreement was more or less likely to be personalized for the family based on the following:

- The greater the percentage of reflecting strategies the mediator used, the more likely the agreement was to be personalized.
- The more engaged participants were, the less likely the agreement was to be more personalized.
- If police had been called prior to the mediation, the agreement was more likely to be personalized.
- Mediator membership in MPME was associated with a more personalized agreement.
- Male mediators were less likely to have personalized agreements than female mediators.
- If participants were involved in a parenting class, they were more likely to have a personalized agreement than those who were not involved in a parenting class.
- The mediator's philosophy that reaching an agreement is important was positively associated with a more personalized agreement.
- Older participants were less likely to have a personalized agreement than younger participants.
- White participants were more likely than non-white participants to have a personalized agreement.

In the first regression equation above, Mediator Eliciting Solutions is the only mediator strategy that increases the probability of agreement. In the final equation above, Mediator Reflecting is the only mediator strategy that increases the probability of a personalized agreement for those cases that reach agreements. Given this, we seek to understand the joint effect of Mediator Eliciting Participant Solutions and Mediator Reflecting. The second column in

Table 13 shows the results when we use interactive variables to see the effect of Mediator Eliciting Participant Solutions along with Mediator Reflecting. To understand whether there is a net positive or negative effect on reaching an agreement, we add the coefficients to each other (1.97 [Mediator Eliciting Participant Solutions] - 0.79 [Mediator Reflecting] - 0.7 [Mediator Eliciting*Mediator Reflecting] = 0.48).

These results revealed that when Mediator Eliciting Participant Solutions and Mediator Reflecting are combined, there is a positive effect on reaching an agreement. However, Mediator Eliciting Participant Solutions has a stronger effect on reaching an agreement than does this combined variable.

Study #2: Long-Term Impact of Mediator Strategies

Participants from the short-term analyses were subsequently included in the long-term study. However, out of the original 270 participants in the short-term study, long term data exists for only 117 individuals. There are several reasons for this attrition. First, many people did not return calls from researchers for the study. Although participants were offered $10 to participate in the follow up study, this offering may not have been enough motivation. For others, contact information may have changed and researchers were not able to access the new contact information. For some cases, the final custody hearing had still not occurred at the time of this analysis, so those cases were dropped from the analysis. In a few other cases, the circumstances changed such that the case could no longer be used. For example, one participant passed away and another couple reunited.

Although some attrition is expected in any study that follows participants over an extended period of time, it is important to be sure that the attrition is not due to factors being studied or that the individuals who were lost did not have a different experience in mediation than those who stayed in the study. A difference-of-means test allows for comparison of the characteristics of those who remained in the study and those who dropped out. (See Appendix C for the results of the difference- of-means test). In general, we find that there are few significant differences between the original group and the group that remained in the study for almost all 31 variables. There was a statistically significant difference in means for four variables.

The following individuals were more likely to be included in the follow-up data set:

- Participants who increased their sense that both theirs and the other participants' needs should be met from before to after the mediation.
- Participants who increased their sense of their ability to work together from before to after the mediation.
- Plaintiffs.

The following individuals were less likely to be included in the follow-up data set:

- Participants from Charles County.

Although these four areas showed a statistically significant difference of means, all remaining variables, including mediator strategies, participant behaviors, participant attitudes, demographics, and other mediation outcomes were not significantly different. Therefore, it was concluded that the observations which were lost were not substantively different from those that were retained.

Summary Statistics

Table 14 below provides the summary statistics for the variables included in Study #2. While many of these variables are the same as the variables in Study #1, because this represents a sub-group of the original group, we present the summary statistics for this group. Table 14 also includes summary statistics for variables that are unique to the follow up study.

Table 14: Summary Statistics for Long-Term Impact Data

Variable	N	Freq.	Percent	Range	Mean (SD)
Case Characteristics					
Agreement (no, partial, yes)	117			0 to 2	1.15 (0.90)
Police Called	117	29	25%		
Pre-Test Attitudinal Measures of Agreement (5) or Disagreement (1)					
Feel Prepared	117			1 to 5	3.79 (0.94)
Prefer Trial	116			1 to 5	2.24 (1.05)
Hope to Resolve	117			2 to 5	4.43 0(.66)
Feel Pressure	116			1 to 5	2.29 (1.12)
Waste of Time	117			1 to 5	1.97 (0.87)
Clear Idea	117			2 to 5	4.11 (0.82)
Know Role Mediator	116			2 to 5	3.90 (0.76)
Know Rights	115			1 to 5	3.82 (0.88)
Know Procedures	115			1 to 5	3.37 (1.07)
Prepared for Trial (no, not sure, yes)	113			0 to 2	1.38 (0.90)
Participant Characteristics					
Parenting Class	116	98	84%		
Male	117	53	45%		
Age	117			19 to 70	36.31 (9.37)
White	116	68	59%		
Attorney	117	79	68%		
Months between custody decision and follow-up survey	117			1 to 14	5.07 (2.06)
Follow Up: Return to Court for Enforcement					
Adversarial Motion	125	23	18%		
Number of Adversarial Motions	125			0 to 3	0.29 (0.69)
Follow Up Test Attitudinal Measures of Agreement (5) or Disagreement (1)					
Satisfied with Outcome	117			1 to 5	3.62 (1.26)
Outcome Working	117			1 to 5	3.46 (1.45)
Outcome Working for Children	117			1 to 5	3.62 (1.40)
I Followed Through	114			1 to 5	4.73 (0.73)
Other Person Followed Through	114			1 to 5	3.36 (1.40)
Would Recommend	117			1 to 5	4.28 (0.91)
Issues Resolved	116			1 to 5	3.21 (1.24)
Relationship Since Intervention					
Contact (Better = 3, Same =2, or Worse = 1)	111			1 to 3	2.26 (0.77)
New Problems Arisen		38	32%		
Difference in level of agreement or disagreement from before intervention to six months after intervention (positive represents an increase in agreement)					
Difference-Number of Ways	117			-4 to 4	0.46 (1.20)
Difference-Child's Needs	116			-1 to 2	0.03 (0.54)

Variable	N	Freq.	Percent	Range	Mean (SD)
Difference-My Needs	117			-4 to 4	0.32 (1.12)
Difference-Important to Understand Other	117			-2 to 4	0.10 (0.99)
Difference-Learn Wrong	116			-4 to 3	-0.09 (1.43)
Difference-Their Needs	116			-2 to 4	0.19 (0.96)
Difference-Positive Relationship	116			-3 to 4	-0.02 (1. 02)
Difference-No Control	115			-4 to 3	-0.25 (1.43)
Difference-Wants Opposite	113			-4 to 3	-0.37 (1.30)
Difference-Can Talk Concerns	117			-4 to 3	-0.02 (1.41)
Difference-No Difference	115			-4 to 4	-0.11 (1.51)
Difference-Children Doing Well	114			-4 to 3	0.30 (1.52)
Difference-Work As Team	116			-3 to 3	0.33 (1.27)
Difference-We Can Decide	117			-3 to 3	0.18 (1.22)
Participant Codes					
Wrong	117			0 to 0.59	0.23 (0.14)
Put Down	117			0 to 0.12	0.02 (0.02)
Need/Want/Feel	117			0 to 0.62	0.19 (0.10)
Care/Appreciate	117			0 to 0.14	0.02 (0.03)
Responsibility/Apology	117			0 to 0.08	0.01 (0.01)
Participant Solution	117			0.08 to 0.53	0.30 (0.10)
Accept Solution	117			0 to 0.50	0.11 (0.10)
Reject Solution	117			0 to 0.11	0.02 (0.02)
Process Complaint	117			0 to 0.01	0.00 (0.00)
Responsibility/Wrong	117			0 to 0.11	0.01 (0.02)
Silence	117			0 to 0.11	0.00 (0.01)
Mediator Characteristics					
Cases last 12 months	117			17 to 310	139.80 (88.12)
Mediator Codes					
Reflections	117			0.02 to 0.39	0.18 (0.09)
Emotions	117			0 to 0.26	0.04 (0.05)
Interests	117			0 to 0.16	0.02 (0.03)
Open Question	117			0 to 0.26	0.05 (0.04)
Fact Question	117			0.02 to 0.36	0.13 (0.08)
Summary of Facts	117			0 to 0.01	0.00 (0.00)
Mediator Opinion	117			0.02 to 0.61	0.15 (0.10)
Advocate/Support	117			0 to 0.04	0.00 (0.01)
Behavioral Direction	117			0 to 0.07	0.01 (0.01)
Common Ground	117			0 to 0.03	0.01 (0.01)
Explain	117			0 to 0.07	0.01 (0.01)
Focus/Narrow	117			0 to 0.09	0.01 (0.01)

Variable	N	Freq.	Percent	Range	Mean (SD)
Introduce Topic	117			0 to 0.09	0.01 (0.02)
Reject Topic	117			0 to 0.03	0.00 (0.01)
Ask for Solutions/Brainstorm	117			0 to 0.33	0.11 (0.06)
Summarize Solutions	117			0 to 0.31	0.13 (0.08)
Suggestion Question	117			0 to 0.11	0.02 (0.02)
Negotiation Question	117			0 to 0.02	0.00 (0.00)
Mediator Solution	117			0 to 0.23	0.06 (0.05)
Request Reaction	117			0 to 0.11	0.03 (0.02)
Legal Assessment	117			0.01 to 0.19	0.05 (0.04)
Percent Caucus	117			0 to 0.69	0.02 (0.09)

Creating New Combined Variables

Principal component analysis and factor analysis were used to create new variables that combined the variables measuring similar concepts. Because the data set for the long-term analysis differs from the original data set, principal component analysis and factor analysis were used to create new variables with the long-term data. Although we expect to find similar patterns pointing to an underlying latent indicator, re-running these analyses with the smaller data set allows for more precise measurement and analysis of outcomes.

As with the short-term data, factor analysis was used to consider the combination of mediator behavior variables based on the idea that mediators have some underlying theory holding together their philosophies and actions that can be identified through factor analysis. Principal component analysis was used to combine the various sets of participant variables with the idea that, while there may be patterns connecting the variables, there was no specific underlying theory being used by participants that would tie their answers together in a potentially predictable way.

For both factor analysis and principal component analysis, the minimum Eigen value was set at 1, and varimax was used for the factor matrix rotation. The outputs were reviewed with the settings to report loadings greater than 0.3 and determined to be either consistent with theory or at least not totally inconsistent with theory or conventional wisdom. New variables were created using the factor loadings associated with each of the variables. The new variables are defined in Tables 15 - 19 below.[7]

[7] For Tables 15-21, variables with an "L" refer to long-term data. Those noted with a "P" refer to participant data. Variables noted with "Diff" are difference scores from before mediation to six months later.

The new variables are listed across the top of the following tables, with the variables they combine listed below.

Table 15: Mediator Strategies Employed During Mediation and Self-Reported Style

Mediator Directing - L	**Mediator Telling - L**	**Mediator Eliciting Participant Solutions - L**	**Mediator Reflecting - L**
Emotions (-0.66)	Reflections (-0.42)	Open Ended Question (-0.35)	Reflections (+0.55)
Interests (-0.68)	Fact Question (0.53)	Fact Question (-0.40)	Emotions (+0.36)
Fact Question (+0.44)	Mediator Opinion (+0.73)	Ask Solution (+0.81)	Interests (+0.32)
Mediator Opinion (+0.33)	Advocate (+0.62)	Summarize Solution (+0.82)	Open-Ended Question (+0.46)
Advocate (+0.35)	Introduce Topic (+0.62)	Request Reaction (+0.59)	Introduce Topic (-0.45)
Behave/Direct (+0.47)	Suggestion Question (+0.37)		Mediator Solution (-0.87)
Explain (+0.61)	Legal Assessment (+0.63)		
Focus/Narrow (-0.52)			
Reject Topic (0.31)			
Suggestion Question (+0.37)			
Request Reaction (+0.37)			

The factor analysis of mediator codes led to four sets of strategies that are used in combination with each other. These groupings are similar to the groupings developed through factor analysis with the short-term data set. However, since more than half of those cases were lost to attrition, there are some differences in the factor analysis results. The similarities in the patterns of behaviors that group together reinforce our conclusion that we have identified some underlying latent construct of behaviors that tend to be used together. However, because the findings do not produce the exact same mixture of behaviors, we use an "L" for "Long-term" as a postfix on these variables. Table 15 provides the variables created through the use of factor analysis on the mediator strategies.

The first set is titled "Mediator Directing-L" and is characterized by strategies that involve the mediator directing the flow of the conversation. These strategies include introducing and enforcing guidelines for behavior, explaining one participant's position to the other, as well as providing their opinion and advocacy for one participant or the other. These strategies also include rejecting topics that participants raise for discussion and they are negatively associated with strategies that attempt to narrow down participants' perspective of the topics for discussion. These strategies are negatively associated with reflecting participants' emotions and interests. These strategies also include mediators using questions to make suggestions and checking with the participants about how they feel about possible solutions.

The second set is titled "Mediator Telling-L" and is characterized by strategies that involve the mediator sharing their ideas about the situation such as opinions, ideas about what topics participants should discuss, suggestions and ideas, advocacy for perspectives coming from either or both participants, and their legal assessment of the case. This set also includes the strategy of asking closed-ended questions to establish facts. The negative loading on Reflections indicates that the strategy of reflecting back what participants were saying was not generally used with these other strategies.

The third set is titled "Mediator Eliciting Participant Solutions -L" and is characterized by asking participants what solutions they would suggest, summarizing those solutions, and checking in with participants to see how they think those ideas might work for them. The negative loading on open-ended and fact-based questions implies that the focus on solutions in this group of strategies is not used at the same time as eliciting a broader understanding of the situation.

The fourth set is titled "Mediator Reflecting-L" since the strategies include heavy use of reflecting back to participants what they said, such as reflecting emotions and interests, as well as asking open-ended questions to invite participants to share their perspective about the situation. This set of strategies is characterized by negative loadings on the strategies that include telling participants their solutions and mediators suggesting to participants topics for discussion.

Whereas factor analysis allows us to identify the sets of strategies used together, and the subsequently created variables allows us to measure the impact of those sets of strategies, these sets of strategies do not necessarily identify types of mediators or mediation models. One also cannot assume that one mediator used only one set of strategies in any given mediation. So while it can be stated that a given strategy has a particular impact and another strategy has a different impact, one mediator may have used both strategies in the same mediation. For example, *Mediator Reflecting* and *Mediator Eliciting Participant Solutions* or *Mediator Offering Perspectives* and *Mediator Eliciting Participant Solutions* might be observed together in the same mediation. Yet, *Mediator Reflecting* and *Mediator Offering Perspectives* might not be observed together since several behaviors that load positively on one, factor negatively on the other.

What these new variables measure is the percentage of the mediator behaviors that fit in those sets of strategies. As such, a positive coefficient on these variables will indicate that a greater percentage of use of these strategies increases the outcome of interest, while a negative

coefficient indicated that the greater percentage of use of these strategies decreases the outcome of interest.

Table 16 presents the variables created by using principal component analysis with the participant pre-mediation attitudes. Since these are almost identical to the combinations created by running principal component analysis (PCA) with the short-term data set, they have been given the same names, but with the postfix "L".

Table 16: Participants' Pre-test Attitudinal Measures

P Want Trial - L	P Knowledge - L	P Prepared - L
I would prefer that we go to trial instead of being in a mediation (+0.44)	I feel prepared for a possible trial (+0.37)	I feel prepared for a possible trial (+0.41)
I hope we can resolve this case in mediation (-0.42)	I have a clear idea of what a mediator does (+0.50)	Have you done anything to prepare for a possible trial? (+0.88)
I feel pressure to participate in this mediation (+0.48)	I know my legal rights as it pertains to this case (+0.52)	
I believe mediation to be a waste of time (+0.53)	I am aware of court procedures related to custody and visitation (+0.51)	
I have a clear idea of what I want to get from today's mediation (-0.31)		

Table 17 presents the variables created by using principal component analysis on the participant behaviors. These combinations are significantly different from those which resulted from PCA with the short-term data set. Therefore, they were given new names.

Table 17: Participant Codes Used During Mediation

P Wrong	P Acknowledge	P Caring
Wrong (+0.5233)	Need Want Feel (+0.6225)	Care/Appreciate (+0.4325)

P Wrong	P Acknowledge	P Caring
Put Down (+0.4533)	Reject Solution (-0.4963)	Responsibility/Apology (+0.5861)
Participant Solution (-0.4222)	Responsibility/Wrong (+0.4625)	Process Complaint (-0.4100)
Accept Solution (-0.4482)		Silence (-0.4504)

PCA was also conducted on the new long-term outcome variables. Two new variables were created: Things Are Working and New Problems. These are shown in Table 18.

Table 18: Participants' Attitude at Follow-Up

Things Are Working	New Problems
At this point, how satisfied are you with the final outcome reached? (+0.3974)	I followed through (0.7240)
How well is the outcome you reached working for you? (+0.4422)	Since the final outcome was reached, have new problems arisen between you and the other person? (+0.5663)
How well is the outcome reached working for your children? (+0.4517)	
How well did the other person follow through on the outcome? (+0.4166)	
Are the interactions worse, the same, or better than six months ago? (+0.3935)	
Since the final outcome was reached, have new problems arisen between you and the other person? (-0.3040)	

Finally, PCA was conducted on the variables which measured the difference in attitude from before mediation to six months after mediation. These also have the postfix "L" to indicate that these are the long-term changes. These are shown in Table 19.

Table 19: Difference between Pre-Test Attitude and Same Question Asked After Six Months

Diff – Working Together - L	Diff – Not Good for Children - L	Diff – Getting Our Needs Met - L	Diff – Frustration - L	Diff – Working Together for Children - L
Diff – I can talk about my concerns with the other person (+0.6537)	Diff – I feel like I have no control over what happens (+0.3410)	Diff – It's important that I get my needs met (0.5621)	Diff – There are a number of ways to resolve the issues (+0.6955)	Diff – It's important to get the children's needs met (+0.6473)
Diff – We work well as a team raising our children (+0.5267)	Diff – The children are doing well with the current arrangement (-0.6767)	Diff – It's important to understand other person (+0.5351)	Diff – The other person needs to learn they are wrong (+0.3283)	Diff – The other person needs to learn they are wrong (-0.3041)
	Diff – Together we can make decisions in the best interest of our children (-0.3826)	Diff – It's important for the other person to get their needs met (0.5420)	Diff – It's important to have a positive relationship (+0.3784)	Diff – It's important to have a positive relationship (+0.4942)
			Diff – I feel like I have no control over what happens (0.3424)	Diff – The other person wants the exact opposite of what I want (-0.3252)
			Diff – It doesn't seem to make any difference what I do (+0.3009)	

Building the Model

The primary goal of this portion of the research is to understand the impact of mediator strategies and experience on the parents' ability to co-parent and their perspective on their child's well-being six months after the mediation occurred. In order to isolate the impact of mediator strategies and experience, ordinary least-squares-multiple-regression analysis was used. Through this approach, the goal was to control for other factors that may affect participants' experience. The analysis included several measures of participant attitude, participant actions (as measured through behavior coding), whether participants are represented or consulted counsel, whether the police were called in the past in the case (as a measure of escalation), participant demographics (age, gender, race), and whether participants attended a parenting class prior to attending

mediation. Also included was a variable measuring whether participants reached a full, partial, or no agreement in mediation, as there was an interest to understand the impact of reaching agreement in the long-term, and the impact of the various mediator strategies regardless of whether or not an agreement was reached. Finally, the analysis held constant for the number of months between when the final custody decision was reached by the court and when the interview occurred. This approach allows the consideration that, over time, as participants settle into a new routine, they may either find it more acceptable or new problems may surface.

Several models were considered. In order to avoid problems associated with multi-collinearity, correlation tables were reviewed for each possible set of independent variables, with the goal of only including variables in the equations if the correlation between them was less than .5. For those variable pairs with a correlation coefficient of .5 or greater, the variable that was considered more central to the analysis was kept. The one exception to this rule was the inclusion of the variable P Wrong. This variable was negatively correlated with reaching an agreement with a correlation of -.5280. This variable is considered to be important from a theoretical perspective in that it measures the degree to which participants disagree with and/or criticize the other participant in the mediation. While the correlation coefficient is above .5, it is only slightly above .5, (.5 is considered a conservative cut off point). Therefore, both P Wrong and Agreement were kept in the equation because both were considered crucial to the analysis.

There were a number of variables for which there were several missing observations and no crucial theoretical reason to include the variable. These variables were dropped. For the variable Number of Cases – 12 Months, a previous analysis[8] had found this variable to be significant so we wished to include it. To address the missing observations, we averaged the value for the obtained observations and inserted those values into the missing observations.

[8] See "What Works in District Court Mediation: Effectiveness of Various Mediation Strategies on Immediate and Long Term Outcomes." MD Judiciary Research Report, August 2015. www.marylandadrresearch.org

Results

Participant Level Long-term Outcomes

Table 20. Ordinary Least Squares Regression Results for Long-term Difference in Attitude

		Diff – Work together - L	Diff – Not Good for Child - L	Diff – Getting Our Needs Met - L	Diff – Frustration - L
Case Characteristics	Agreement	.12 (0.45)	.04 (0.17)	.14 (0.58)	.03 (0.14)
	Attorney	-.12 (-0.27)	.22 (0.55)	-.27 (-0.67)	.11 (0.34)
	Police Called	.15 (0.36)	-.85* (-2.28)	-.49 (1.33)	-.33 (-1.06)
	Parenting Class	-.07 (-0.13)	.46 (0.90)	-.44 (-0.87)	.82 (1.93)
Participant Attitude	P Want Trial – L	-.02 (-0.13)	.00 (0.03)	.12 (1.08)	-.06 (-0.62)
	P Knowledge – L	.08 (0.66)	.04 (0.33)	.08 (0.74)	-.05 (-0.51)
	P Prepared – L	-.17 (-0.99)	-.04 (-0.27)	.16 (1.02)	.10 0.77
Participant Strategies	P Wrong	-.09 (-0.61)	-.12 (-0.93)	.00 (0.00)	.01 (0.13)
	P Acknowledge	-.03 (-0.23)	.01 (0.09)	-.10 (-0.81)	-.07 (-0.67)
	P Caring	-.04 (-0.21)	-.01 (-0.08)	.04 (0.23)	-.22 (-1.44)
Mediator Strategies	Mediator Directing – L	-.05 (-0.24)	-.24 (-1.16)	-.18 (-0.88)	-.09 (-0.50)
	Mediator Telling – L	-.16 (-0.83)	.01 (0.08)	-.09 (-0.51)	.11 (0.76)
	Mediator Eliciting – L	.07 (0.30)	.01 (0.07)	.18 (0.89)	-.16 (-0.93)
	Mediator Reflecting – L	.46* (2.·00)	-.22 (-1.08)	.25 (1.23)	.13 (0.73)
	Percent Caucus 2	.55 (0.17)	-2.84 (-1.00)	-.375 (-1.33)	-.70 (-0.30)
	Mediator Number of Cases – last 12 months	.00 (0.86)	.00 (-0.08)	-.00 (-0.05)	.00 (0.10)

		Diff – Work together - L	Diff – Not Good for Child - L	Diff – Getting Our Needs Met - L	Diff – Frustration - L
Participant Demographics	Male	-.21 (-0.60)	-.58 (-1.85)	-.27 (-0.87)	.13 (0.50)
	Age	.00 (0.21)	-.01 (-0.36)	.00 (-0.12)	.00 (0.24)
	White	-.50 (-1.39)	.49 (1.53)	.12 (0.38)	.24 (0.91)
	Months between custody decision and follow-up	.08 (0.92)	-.07 (-0.92)	-.14 (-1.83)	.03 (0.45)
	Constant	-.43 (-0.40)	.25 (0.25)	1.39 (1.43)	-1.20 (-1.47)
	Number of Observations	95	95	95	95
	Adjusted R-Squared	-0.0864	0.0658	-0.0358	-0.0520

* Significant at p<.05 ** Significant at p<.01

An increase from before the mediation to six months after the mediation in the participants' report that they can talk about concerns with the other parent and work as a team in raising their children is:

- Positively associated with a greater percentage of the mediator reflecting strategies.

No mediator strategies or mediation program structures were significantly associated with the 6-month change in participants' sense that the child was doing well and that the parents could make decisions together in the best interest of the child.

No mediator strategies or mediation program structures were significantly associated with the 6-month change in participants' sense that it was important for both parents to get their needs met in the situation.

No mediator strategies or mediation program structures were significantly associated with the 6-month change in participants' sense of hopelessness about the situation.

Table 21. Ordinary Least Squares Regression Results for Long-term Difference in Attitude and Long-term Outcomes

		Diff – Working Together For Child's Needs - L	Things Are Working - L	New Problems - L
Case Characteristics	Agreement	.26 (1. 45)	.02 (0.05)	.09 (0.51)
	Attorney	-.40 (-1.33)	-.58 (-1.19)	.66* (2.59)
	Police Called	.35 (1.24)	1.02* (2.03)	.24 (0.92)
	Parenting Class	.88* (2.33)	-.08 (-0.13)	-.20 (-0.63)
Participant Attitude	P Want Trial – L	.25** (3.14)	.08 (0.56)	.03 (0.43)
	P Knowledge – L	-.07 (-0.87)	-.07 (-0.48)	-.02 (-0.20)
	P Prepared – L	-.17 (-1.44)	-.32 (-1.57)	-.16 (-1.50)
Participant Strategies	P Wrong	.00 (0.04)	-.33 (-1.89)	.14 (1.57)
	P Acknowledge	-.03 (-0.34)	.23 1. 34	-.07 (-0.79)
	P Caring	-.04 (-0.27)	.60* (2.35)	.17 (1.27)
Mediator Strategies	Mediator Directing – L	-.02 (-0.12)	.51 (1.86)	-.11 (-0.75)
	Mediator Telling – L	.00 (-0.01)	.01 (0.05)	.13 (1.10)

		Diff – Working Together For Child's Needs - L	Things Are Working - L	New Problems - L
	Mediator Eliciting – L	-.17 (-1.09)	. 25 (0.87)	-.22 (-1.47)
	Mediator Reflecting – L	.41* (2.62)	.12 (0.42)	-.27 (-1.81)
	Percent Caucus 2	-1.99 (-0.93)	-1.48 (-0.38)	-1.98 (-0.99)
	Mediator Number of Cases – last 12 months	.00 (0.62)	.00 (-0.64)	.00 (1.17)
Participant Demographics	Male	.23 (0.99)	.05 (0.12)	-.43* (-2.00)
	Age	.00 (-0.29)	.02 (0.64)	-.02 (-1.88)
	White	.53 (0.22)	.07 (0.17)	-.30 (-1.33)
	Months between custody decision and follow-up	.12* (2.06)	. 06 (0.63)	-.15** (-2.79)
	Constant	-1.56* (-2.14)	-.58 (-0.45)	1.37* (2.04)
	Number of Observations	95	98	98
	Adjusted R-Squared	0.1187	-0.0057	0.1471

* Significant at p<.05 ** Significant at p<.01

An increase from before the mediation to 6 months after in the participants' commitment to prioritizing the children's needs, a desire to have a positive relationship with the other parent, and a willingness to consider the other parent's perspective was:

- Positively associated with a greater percentage of the mediator reflecting strategies.
- Positively associated with participation in parenting classes before the mediation.

- Positively associated with the number of months from the date of the final court order and the time of the interview.

No mediator strategy or mediation program structures were significantly associated with participants generally reporting that things were working well in the follow up interview.

No mediator strategy or mediation program structures were significantly associated with participants reporting that new problems had arisen. However, participants reporting that they followed through on the agreement and that new problems had arisen was:

- Positively associated with participants being represented by or having consulted an attorney.
- Negatively associated with male participants
- Negatively associated with the number of months between the court's final custody determination and the time of the interview.

Table 22. Logistical and Ordered Logistical Regression Results for Adversarial Motions Filed and Number of Adversarial Motions Filed

		Adversarial Motion	Number of Adversarial Motions
	Agreement	-.07 (-0.15)	-.04 (-0.09)
Case Characteristics	Police Called	.83 (1.02)	.57 (0.73)
	Represented or Consulted	.33 (0.34)	.17 (0.18)
	Parenting class	-.19 (-0.21)	-.71 (-0.81)
	Related case	1.14 (1.17)	1.62 (1.67)
Participant Attitude	Participant Knowledge	.31 (1.36)	.25 (1.13)
	Participant Want Trial	.30 (1.47)	.18 (0.94)
	Participant Prepared	-.34 (-0.88)	-.40 (-1.05)
Joint Participant Strategies	Joint Participant Options	-.21 (-0.97)	-.16 (-0.76)
	Joint Participant Not Engaged	.23 (0.84)	.26 (1.02)
	Joint Participant Engaged	-.39 (-1.34)	-.53 (-1.84)
	Joint Participant Acknowledge	-.45 (-1.46)	-.40 (-1.37)
Mediator Strategies and Characteristics	Mediator Reflecting	-.32 (-0.73)	-.27 (-0.61)
	Mediator Eliciting	-.43 (-0.95)	-.58 (-1.30)
	Mediator Telling	.54 (1.37)	.36 (1.00)
	Mediator Directing	.71* (2.33)	.89** (3.00)
	Percent caucus	-4.30 (-0.99)	-3.08 (-0.76)
	Number of Cases – last 12 months	.00 (0.36)	.00 (0.81)

Participant Characteristics	Age	-.07 (-1.54)	-.11* (-2.20)
	White	-1.00 (-0.87)	-1.16 (-0.98)
	Married	.67 (0.99)	.61 (0.93)
	Constant	-.28 (-0.13)	
	Number of Observations	121	121
	Pseudo R Squared	0.2815	0.2341

The likelihood of returning to court in the 12 months after mediation for with an adversarial motion was:

- Positively associated with an increase in mediator directing strategies.

The number of adversarial motions filed in the 12 months after mediation was:

- Positively associated with an increase in mediator directing strategies.
- Negatively associated with the average age of the participants involved.

Discussion of Results

This research is unique, and to our knowledge, the only study conducted in the family court context that isolates actual, observed mediator strategies and program components and examines the impact of these strategies on: agreements; consent orders; changes in participants' attitudes in the long and short-term; and participants' experience of the process. Many studies ask mediators what they did and what they think was effective. Those studies are limited by the individual mediator's bias about his or her own work

Other studies report on participants' experiences of "the mediation process". These studies are often called the "black box" studies because the process is treated as a black box and as though everything inside it is the same. An inherent problem with these studies is that depending on the mediators' approach, participants may experience very different outcomes. When all of the processes are combined, the range of outcomes may be masked. These studies may actually understate the potential of mediation because effective and ineffective strategies are all combined in one group and called mediation.

This study observed what mediators actually did, and asked participants about their experiences with the mediation. Many questions were asked of participants before and after the mediation and then again six months later, in order to measure the change in attitude from pre- to post-mediation and after several months. In addition, because this study includes information about the participants' pre-mediation attitude and behaviors, the impact of mediator strategies is isolated. Below, there is a summary of the impacts of each set of strategies.

Caucus

The short-term analysis found that the greater the percentage of time that the mediator spent in caucus, the more likely the participant was to indicate that the mediator respected them and did not take sides. This suggests that using caucus allows participants to build a positive sense of the mediator; however, more time in caucus also resulted in participants increasing their sense of hopelessness about the situation from before, to after the mediation. In addition, greater time in caucus resulted in participants decreasing their belief that they could work together with the other parent to resolve their conflict or that there were a range of options that could resolve their conflict. It appears that while caucusing increases faith in the mediator, it decreases faith and problem-solving potential with the other participant. It is important to remember that these are findings that are statistically significant even after holding constant for the attitude of the participant, the strategies used by the participant, and the level of escalation before the mediation. Although some mediators report that they move to caucus in more challenging situations, this method of analysis allows us to account for how challenging the situation was and find that, above and beyond those factors, time in caucus was associated with reported decreases in ability to work with the other person. Furthermore, the participant's ability to work with the other person was measured by asking the same question before and after the mediation, so it is an actual shift in the participants' attitudes that is measured, rather than a static question asked at one point in time. The percentage of time spent in caucus had no statistically significant impact (positive or negative) on reaching an agreement or a consent order.

The analysis found that the percentage of time spent in caucus had no significant impact on any of the long-term measures.

Mediator Directing Strategies

Mediator Directing included: introducing and enforcing guidelines for behavior; explaining one participant's position to the other; the mediator providing their opinion; and the mediator advocating for one participant or the other. From survey responses immediately after the mediation (short-term), the greater the percentage of directing strategies the mediator employed, the less likely the participant was to indicate that the mediator respected them and did not take sides. In examining the likelihood that the case will return to court, the greater the percentage of mediator directing strategies, the more likely the participants are to file an adversarial motion, and to file a greater number of adversarial motions.

Mediator Reflecting Strategies

From the short-term data set, Mediator Reflecting strategies include:

- frequent use of reflecting back the participants' emotions and interests, and
- clarifying with participants the topics to address.

The long-term data set for Mediator Reflecting included the same behaviors as the short-term as well as two additional behaviors:

- reflecting back to participants a general summary of what they expressed
- asking open-ended questions.

This set of strategies is also characterized by not using strategies that involve a mediator providing his or her own ideas and solutions to the participants.

In the short-term analysis, Mediator Reflecting had significant effects on several outcomes of interest. In the short-term, the greater the percentage of Reflecting the mediator employed, the more likely the participant was to indicate that the other participant listened to them and increased understanding of them through the process. Greater use of Mediator Reflecting was also associated with a decrease in the rejection of the other participant's perspective, when compared from before to after the mediation. The reflective strategies were also positively associated with an increase from before to after the mediation in the participants' belief that they could work together to resolve their conflicts and consider a range of options.

The mediator's singular use of Reflecting demonstrates several positive outcomes in terms of changes in the participants' attitude toward each other and belief that they could work together; however, the greater percentage of Reflecting strategies was also associated with a lower likelihood of reaching an agreement. One possible explanation for this may be that the set of strategies included in Mediator Reflecting does not include any problem-solving strategies (neither asking participants for solutions nor offering mediator solutions). So it is possible that, in addition to Mediator Reflecting, mediators are also using some other type of problem-solving strategy. The current analysis was not able to test for this possibility; however, the present study tested for what would occur if a mediator combines Mediator Reflecting with asking participants for their ideas about solutions. Results indicated that if the two are used together in a mediation, the overall impact was positive in terms of reaching an agreement. Even if only Mediator Reflecting was used and no agreement was reached, participants remained as likely to reach a consent order.

Mediator Reflecting was the only set of mediator strategies that was tied to more personalized agreements. There are two ways to understand this outcome. One is that because Reflecting is about listening to and understanding participants' perspective, the agreements that come out of these mediations are more likely to be connected directly to these perspectives. The second is that mediators who use strategies that are focused on listening and understanding the perspectives of participants are also more likely to write agreements that are specific to the uniqueness of the participants with whom they are working.

Finally, Mediator Reflecting was the only set of mediator strategies that had a significant impact on long-term outcomes. Specifically, Mediator Reflecting was positively associated with an increase from before mediation to six months after mediation in the participants reporting that they can talk about concerns with the other parent and work as a team in raising their child.

Mediator Reflecting was also positively associated with an increase from before the mediation to six months after in the participants' prioritization of their children's needs, a desire to have a positive relationship with the other parent, and a willingness to consider the other parent's perspective.

Mediator Eliciting Participant Solutions

From the short-term data analysis, Mediator Eliciting Participant Solutions is characterized by mediator strategies that involve asking participants what solutions they would suggest, summarizing those solutions, and checking in with participants by asking how they think those ideas might work for them. This set of strategies has the most positive impact on the short-term outcomes of interest. The greater percentage of Mediator Eliciting Participant Solutions, the more likely the participant was to indicate that the other participants listened to them and increased understanding of them through the process. Furthermore, the greater percentage of Mediator Eliciting Participant Solutions, the more likely the participants were to indicate that they themselves became clearer about their desires and that the underlying issues came out. In terms of a shift in attitude from before mediation to immediately after mediation, the greater the percentage of Mediator Eliciting Participant Solutions, the more likely the participants were to believe they could work together to resolve their conflicts with a range of options after the mediation than they had been before the mediation. The greater the percentage of Mediator Eliciting Participant Solutions, the more likely the case was to reach an agreement and the more likely the case was to result in a consent order.

These outcomes are important for several reasons. The inclusion of participant attitudes and behaviors in the analysis assures us that the outcomes hold constant regardless of participant attitude and behavior. Only Mediator Eliciting Participant Solutions involves asking participants their ideas about solutions, and it is the only set of strategies that is positively associated with an agreement and a consent order. This is in addition to their association with several positive outcomes in terms of participants' shifts in attitude toward each other and the conflict.

Finally, Mediator Eliciting Participant Solutions did not have any significant impacts on any of the long-term measures.

Mediator Offering Perspective

In the short-term data analysis, Mediator Offering Perspective is characterized by strategies that involve the mediator sharing his or her ideas about the situation, such as opinions, ideas about what topics participants should discuss, suggestions, and advocacy for perspectives coming from either or both participants. The strategy of reflecting back what participants were saying was not generally used with the strategies of mediators offering their perspective. Mediator Offering Perspective did not have a statistically significant effect on any of the outcomes measured in this analysis, short or long-term.

Reaching an Agreement

Reaching an agreement in mediation results in participants reporting several positive outcomes after the mediation. Reaching a full agreement or partial agreement had a positive

effect on participants reporting listening to each other and increasing understanding of each other as well as a positive effect on participants reporting satisfaction and likelihood of reusing mediation. In addition, reaching a full or partial agreement had a positive effect on participants reporting that they became clearer about their desires and that the underlying issues came out. Reaching full or partial agreement had a positive effect on participants feeling less hopelessness after the mediation and a negative effect on participants dismissing the other participant's needs and perspectives. Finally, reaching an agreement did not have a significant impact on any of the long-term measures.

Parenting Class

In general, participants having attended a parenting class prior to mediation did not seem to have an effect on most outcomes of interest. Participants who attended the parenting class were less likely than those who did not attend a parenting class to indicate that they became clearer about their desires as a result of mediation and that the underlying issues were discussed in the mediation. This is a somewhat puzzling result. One possible explanation may be that participants felt clearer about their goals and discussed underlying issues before attending mediation due to the parenting class, and thus, did not associate these outcomes with the mediation.

Participants who attended a parenting class were more likely to have a more personalized agreement compared to those who did not attend a parenting class. This may be because they better understood the goal of mediation to be developing solutions specific to their family and were more likely to take advantage of such an opportunity.

Participants who attended a parenting class were more likely to report an increase from before the mediation to six months after the mediation in their sense of the need to prioritize the children's needs, a desire to have a positive relationship with the other parent, and a willingness to consider the other parent's perspective.

Because the researchers did not have detailed information about the nature of or quality of the different parenting classes offered in the jurisdictions studied, it remains uncertain what might be affecting these outcomes.

Location of the Mediation

Before the mediation started, the researchers asked the participants if the location of the mediation was convenient to them. The participants' perception that the location was convenient had a positive and significant effect on the likelihood of reaching an agreement in mediation. It did not have a significant effect on other variables measured in this analysis. Participants' comfort and sense of convenience may make them more open and willing to engage and stay with the process until an agreement is reached.

MPME Membership

Maryland Program for Mediator Excellence (MPME) membership did not have a significant result on most of the outcomes measured. The one exception is on the personalization of agreements. Mediators who were MPME members were more likely to write more

personalized agreements. This may be due to the MPME's focus on ethics, and self-determination, as well as the continuing education and reflection opportunities that help keep MPME mediators grounded in the premise that mediation is a process where participants should develop their own solutions.

Limitations

The primary limitation of this study is the small sample size. The intense and thorough method of data collection, including observations, pre- and post-test in-person surveys, and reviews of court files, is the strength of this study. This level of analysis has a high cost in terms of personnel and financial resources. As a result, fewer cases were observed than might be ideal. While there is still a high level of confidence in the outcomes that were found, there may be other statistically significant relationships that were not able to be identified in this smaller data set but that may be found with a larger sample size. The small sample size is especially problematic when measuring the impact of strategies on the personalization of agreements. This is done only for cases which reached agreement, and further limited to agreements that could not be obtained to review. As a result, there were only 66 cases which could be examined for personalization of agreements. Though several variables were significant, a larger dataset may have allowed for more subtle analysis.

The small sample size becomes even more of a limitation with the analysis of the longer term participant attitude changes. Because so many observations were lost due to an inability to contact participants for an interview, the sample size for the long-term analysis is less than half that of the original data set. Still, it is remarkable that there are statistically significant findings in this data set and reason to believe that other underlying relationships would surface as significant if there were a larger data set.

The study is also limited by its uniqueness. Since few other similar studies exist on which to compare these results. Ideally, future studies will use similar methodology to allow for comparison across a number of studies in different settings.

A lack of diversity among the mediators presents another limitation. Many mediators were observed several times. This occurred because in Baltimore County there are only six mediators on staff (three of whom were only observed for a few months and three of whom were observed over the course of two years). Furthermore, at the Anne Arundel Conflict Resolution Center, there are a few mediators who conduct the majority of the mediation sessions. Because this research looked at strategies that were actually used in any given session and how these impacted different families going through the process, observing the same mediator in different mediations still provided for variability. Observing a broader set of mediators, however, might have identified even different strategies. For example, no mediator in this study self-identified as a Transformative Mediator. A more comprehensive study might include as broad a range of mediators as possible.

Finally, it is important to note that this research measured what the mediators did, but not whether they did it well. For example, if a mediator reflected a feeling back to a participant ("it sounds like you feel worried when the children go hiking with Mike"), it was coded as feeling. The quality or accuracy of the reflection was not noted. So these outcomes indicate which

general strategies have which outcomes. The skill level of the mediator and quality of the process also matter, but could not be measured here.

Recommendations

This research is unique in identifying the short and long-term impact of specific mediator strategies on both immediate (short-term) outcomes as well as outcomes six months after the mediation (long-term) and subsequent adversarial motions 12 months after the mediation. One reason for the nearly universal support of mediation for child access disputes is that parents have to work together to co-parent their child regardless of their relationship status. Therefore, the findings related to mediator strategies that are positively related to an increase in participants' sense of hope, clarity and understanding of each other, and their belief that they can work with the other parent, are relevant.

Mediators reflecting what participants are saying (with a focus on their emotions, interests, and clarification of topics) and mediators asking participants for solutions are consistently positively related to outcomes that indicate a greater ability for parents to work together. Mediators reflecting what participants are saying, and asking them to share more of their perspective is also positively associated with a long-term increase in parents' reported ability to work together to meet the children's needs, as well as their willingness to consider the other parents' perspective. While the reflecting strategies alone are associated with a lower likelihood of agreement, the combination of reflecting and asking participants their ideas for solutions are positively associated with agreements. Therefore, this combination of strategies could be considered a promising practice for child access mediation.

The strategies involving mediators sharing their opinions and ideas generally did not have a statistically significant impact in any direction.

Strategies involving the mediator directing the behavior of participants, such as attempting to explain information from one participant to the other, and advocating for one or the other participant's ideas, resulted in participants having a less favorable opinion of the mediator. In addition, these strategies were associated with a greater likelihood that the case would return to court with an adversarial motion and associated with a greater number of adversarial motions. Therefore, court programs should carefully consider the strategies that they encourage and discourage among their mediators. The impact of caucusing is interesting in that it seemed to result in the participants appreciating the mediator (reporting that the mediator listened, respected the participants, and did not take sides) but resulted in a decreased ability or desire to work with the other participant. Given that the goal of child access mediation is to support participants to be able to work with one another, these findings suggest that a caucus is not a helpful tool in child access mediation.

Participants who report at the beginning of the mediation that the mediation location is convenient are more likely to reach an agreement. This finding suggests that efforts to schedule mediations in locations convenient to participants may result in a higher rate of reaching agreements.

MPME membership is associated with more personalized agreements. Even though this outcome is the only one for which MPME membership is significant, personal agreements are an indicator of the self-determination ethic of the mediation process. Therefore, this finding should be considered important. MPME membership should be encouraged or required for child access mediators.

Participation in parenting classes prior to mediation appears to have somewhat mixed short-term outcomes and one positive long-term outcome. Because parenting classes may differ across jurisdictions, more research is needed to identify what approaches to parenting classes are effective.

This study provides a glimpse into the "black box" of mediation and its impact on the participants. The Maryland Judiciary is hopeful that this research model can be replicated with a larger and more diverse sample of cases. More research examining these crucial questions will result in more confident and informed recommendations for effective mediator strategies and court mediation program structures.

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Appendix A: Summary Report Handout

Maryland Judiciary Statewide Evaluation of Alternative Dispute Resolution

Effectiveness of Mediator Strategies in Custody Mediation

Maryland court rules require judges to refer all contested child custody cases to attend mediation, except in situations of abuse. Statistical analysis of actual mediations revealed four groups of mediator strategies for study. Mediators often use more than one set of strategies: the groupings described are strategies commonly used together. These are not labels for types of mediators.

Reflecting Strategies:
- Reflecting emotions & interests
- Clarifying topics to work on
- Reflecting what participants say (LT)
- Open-ended questions (LT)

Reflect

The greater percentage of reflecting strategies used, the more likely it is that participants will:
- Say the other person listened & understood
- Become more able to work together
- Develop more personalized agreements

The less likely it is they will:
- Dismiss the other's perspective
- Reach an agreement

Long Term Results (LT)
Six months after mediation, the greater percentage of reflective strategies used, the more likely it is that participants will:
- Become more able to work together
- Prioritize their children's needs and consider the other parent's perspective

Directing Strategies:
- Introducing & enforcing guidelines
- Explaining one participant to another
- Advocating for one participant's ideas

Direct

The greater percentage of directing strategies used, the less likely it is that participants will:
- Report the mediator listened to them and respected them

Long Term Results (LT)
Twelve months after the mediation, the greater percentage of directive strategies used, the more likely it is that participants will :
- Return to court and file an adversarial motion and the more adversarial motions they are likely to file

Eliciting Strategies:
- Asking participants to think of solutions
- Summarizing solutions
- Asking how solutions might work for them

Elicit

The greater percentage of eliciting strategies used, the more likely it is that participants will:
- Reach an agreement
- Say the other person listened & understood
- Become clearer about their desires
- Say the underlying issues came out
- Become more able to work together

Telling Strategies:
- Sharing opinions
- Offering solutions
- Assessing legal options
- Introducing topics

Tell

This strategy was not statistically significant in any positive or negative outcomes.

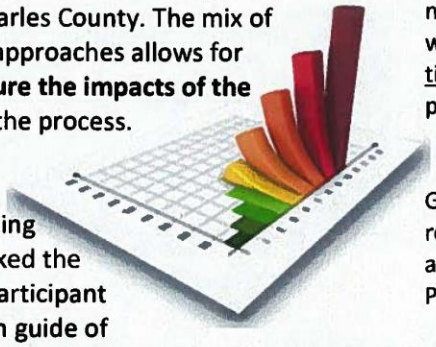
When Reflecting and Eliciting are combined:

Participants are more likely to: report a positive shift in their ability to work together, say that the other person listened and understands them better, indicate that the underlying issues came out, and reach a personalized agreement.

Full report: www.marylandADRresearch.org/publications

Data Collection

Data for this study were collected in the Family Court mediation programs in Anne Arundel County, Baltimore County, and Charles County. The mix of programs and mediation approaches allows for enough diversity to **measure the impacts of the different component**s of the process.



Trained researchers observed 135 cases including 270 participants, and tracked the mediator strategies and participant behaviors using a common guide of 35 possible behaviors.

Many survey questions were asked of participants both before and after the mediation, to measure their change in attitude. Researchers also reviewed each court case file to examine the final parenting agreement, consent order or court decree relating to custody.

The Maryland Judiciary has a long-term commitment to building ADR programs in Maryland. The Administrative Office of the Courts commissioned this study to be conducted by independent researchers in its ongoing effort to provide the highest quality service to Marylanders.

Additional Findings

In addition, this research found that participants who reported that they found the location of the mediation to be convenient were more likely to reach an agreement. This finding underlines the importance of holding mediation sessions in convenient locations.

Impact of Caucusing

The impact of caucusing is interesting in that it leads to positive reports about the mediator but negative outcomes for participants' ability to work together. The greater the percentage of time spent in caucus, the more likely the participants were to report the mediator respected them and did not take sides.

Greater percentage of time in caucus also resulted in the following changes in participants attitudes from *before to after the mediation*. Participants were

- -More hopeless about the situation
- -Less likely to believe they could work with the other participant
- -Less likely to believe there are a range of options for resolution

What it Means

In family mediation, mediators can engage with parents in ways that support parents making their own decisions, by seeking to understand parents' values and by asking them about their ideas for possible outcomes. Alternatively, mediators can engage ways that assume parents need the mediators' ideas and suggestions.

Our research found that when mediators seek to understand parents and elicit their ideas, parents believe they can work together and make decisions for their family. The mediator strategies of eliciting parents' ideas are also the only strategies that were more likely to reach an agreement and consent order.

This research, commissioned by the **Maryland Judiciary**, is part of its Statewide Evaluation of Court ADR. The project was led by the Administrative Office of the Courts, and funded in part by a grant from the State Justice Institute. Salisbury University and the University of Maryland worked on the statewide study under memoranda of understanding with AOC. The research for this portion of the study was conducted by the Community Mediation Maryland, and the Bosserman Center for Conflict Resolution at Salisbury University. Lorig Charkoudian, PhD, served as lead researcher. Additional information about the research methods, data collection tools, and statistical analyses, and the full study can be found in the full report at: www.marylandADRresearch.org/publications, and at www.mdcourts.gov/publications/reports.html

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Appendix B: Additional Regression Results

Table B-1 below reports the results of the Ordinary Least Squares Regressions on outcomes, as reported by participants after the mediation session. Questions regarding the outcome being fair, implementable, and meeting the child's needs were only asked of those participants who reported reaching a partial or full agreement, hence the lower number of observations.

Table B- 1. Ordinary Least Squares Regression Results for Outcome Measures by Participant

		Issues Resolved	Outcome Fair	Can Implement	Child's Needs Met
	Agreement	.70** (13.30)	.40** (3.52)	.32** (3.98)	.39** (3.37)
Case Characteristics	Police Called	.06 (0.75)	.02 (0.16)	-.02 (-0.18)	.16 (0.94)
	Represented or Consult	-.11 (-1.18)	-.13 (-0.75)	-.01 (-0.08)	-.13 (-0.75)
	Parenting Class	-.02 (-0.21)	-.06 (-0.29)	.10 (0.67)	.30 (1.48)
Participant Attitude	Participant Knowledge	.02 (0.61)	.03 (0.58)	.04 (1.11)	.06 (1.08)
	Participant Want Trial	-.00 (-0.13)	-.06 (-1.12)	-.07 (-1.90)	-.05 (-0.95)
	Participant Prepared	-.07 (-1.65)	-.04 (-0.48)	-0.7 (-1.40)	-.11 (-1.52)
Participant Strategies	Participant Care Need	.04 (1.08)	.16* (1.97)	.16* (2.96)	.19* (2.44)
	Participant Won't Work	.02 (-0.53)	-.05 (-0.46)	-.03 (-0.38)	-.16 (-1.48)
	Participant Not Engaged	-.00 (-0.13)	.13 (0.87)	.02 (0.21)	-.03 (-0.21)
Mediator Strategies	Mediator Reflecting	.04 (0.83)	.02 (0.22)	-.01 (-0.15)	.03 (0.33)
	Mediator Offering Perspectives	.03 (0.66)	.06 (0.69)	.11 (1.95)	.14 (1.66)
	Mediator Eliciting Participant Solutions	.08 (1.56)	.08 (0.72)	.06 (0.85)	.08 (0.77)
	Mediator Directing	.08 (1.56)	.03 (0.36)	.03 (0.51)	.11 (1.32)
	Percent Caucus	-.997 (-1.88)	-1.49 (-0.73)	-.84 (-0.31)	-3.08 (-0.80)

		Issues Resolved	Outcome Fair	Can Implement	Child's Needs Met
	Mediator Number Cases – 12 months	-.00 (-0.82)	-.00 (-1.12)	-.00 (-1.43)	-.00 (-1.26)
Participant Characteristics	Male	-.00 (-0.06)	.26 (1.66)	.20 (1.81)	.19 (1.23)
	Age	.00 (0.31)	-.00 (-0.25)	-.00 (-0.82)	-.01 (-0.77)
	White	-.05 (-0.64)	.17 (1.07)	.13 (1.21)	.11 (0.74)
	Match My Gender	.01 (0.14)	.03 (0.22)	-.18 (1.62)	.08 (0.51)
	Constant	.29 (1.21)	3.45 (8.06)	3.80 (12.85)	3.3 (8.15)
	Number Observations	207	140	138	136
	Adjusted R-Squared	0.6192	0.0690	0.2337	0.1437

* Significant at p<.05 ** Significant at p<.01

Appendix C: Difference of Means and Chi-Squared Results

The tables below show the difference of means and chi-squared results for comparisons between those participant who completed the follow-up survey and those who did not.

Table C-1: *Significant Differences Between Participants Completing the Follow-Up Survey*

Table C.1- 1: Chi-Square Test Results for Follow-up by Jurisdiction

	Follow up – No (0)	Follow up- Yes (1)
Not Charles County	140 (92%)	114 (97%)
Yes Charles County	13 (8%)	3 (3%)

Pearson Chi2 = 4.1858, df = 1, p<.05

Table C.1- 2: Chi-Square Test Results for Follow-up by Role

	Follow up – No (0)	Follow up- Yes (1)
No (survey respondent is not) Plaintiff	84 (55%)	49 (42%)
Yes (survey respondent is) Plaintiff	69 (45%)	68 (58%)

Pearson Chi2 = 4.4978, df = 1, p<.05

Table C. 2: Difference of Means Between Participants who Completed the Follow-Up Survey and those who did not

	In Follow Up (1)			Not in Follow Up (0)			Significant Difference
	N	Mean	SD	N	Mean	SD	
Mediator strategies and ADR session characteristics, compared between those who completed the follow-up and those who did not							
Agreement – none (0), partial(1), full (2)	117	1.17	.89	153	.98	.96	-.19*
Participant demographics and attitude prior to ADR, compared between those who completed the follow-up and those who did not							
Age (participant)	117	36.31	9.37	150	34.76	7.66	-1.55†
Participant Prepared	106	.12	1.01	142	-.09	1.15	-.21†
Level of Agreement (5) or Disagreement (1) with the following statements immediately after ADR, compared between those who completed the follow-up and those who did not							

	In Follow Up (1)			Not in Follow Up (0)			Significant Difference
	N	Mean	SD	N	Mean	SD	
P Recommend/Satisfied	109	.13	1.22	142	-.10	1.49	-.23†
Difference Between Level of Agreement before ADR and level of agreement after ADR, compared between those who completed follow-up and those who did not							
P Diff Our Needs	100	.18	1.13	126	-.15	1.22	-.33*
P Diff Together Options	100	.18	1.16	126	-.15	1.17	-.33*
P Diff Other Wrong	100	-.12	1.25	126	.09	1.08	.21†

* Difference between those in the treatment group to those in the comparison group is significant $p<.05$ using a two-tailed test

† Difference between those in the treatment group to those in the comparison group is significant $p<.10$ using a two-tailed test

The following variables were tested and there was no statistically significant difference between those who responded to the follow-up survey and those who did not: Anne Arundel – Roster Mediators, Anne Arundel – Community Med., Baltimore County, Someone Called Police, Represented or Consulted Attorney, Male, White, Mediator Matched Participant's Gender, Mediator Reflecting, Mediator Eliciting, Mediator Telling, Mediator Directing, Percentage of Time in Caucus, Participant Knowledge, Participant Want Trial, P M No Respect, P Understand Listen, P Clear Understand, P Recommend/Satisfied, P Hopeless, P Diff Child Focus

Appendix D: Surveys and Consent Forms

Maryland Judiciary
Dispute Resolution Study
Consent Form for ADR Session

The Maryland Judiciary is conducting research about Alternative Dispute Resolution in the court system, and the research is looking at how you experience the court system. Part of the study will compare the results of alternative dispute resolution to the results of cases that go to trial. The research will also identify what strategies used in an ADR session are most effective.

All of the data collected will be kept strictly confidential:

- Only the research team will have access to the data.
- The court will not have access to your personal information. Your information will be entered into the database and then destroyed.
- Answers from over 2,000 people total will be in the database.

Participation in this study is completely voluntary and you may choose to stop at any time. Your choice to participate in the research does not affect your participation in ADR. You can choose not to participate and still use ADR. If you choose to participate:

- You will be asked a short survey before and after your ADR session
- Researchers will observe the ADR session and note what occurs
    - ADR is confidential, and that applies to the observers as well
    - Researchers will not record the content of your discussion in any way
- Information will be gathered from your case file and other law enforcement records.
- Your choice (to participate or not) will have no effect on your court case.
- Your participation assists the Maryland Judiciary in providing a better service.

After the ADR session is complete, the observers will ask if you wish to participate in a short follow-up survey by phone in three to six months. If you choose to participate in the follow-up survey, you would be given $10 for your participation.

By signing below, I agree that a Salisbury University researcher, under the direction of the Maryland Judiciary, may ask me questions about my conflict and observe my ADR session. I know that I can change my mind at any time and inform the researchers that I do not want to be part of this study.

_____	_____
Signed	Parent or Guardian Signature (if minor)
_____	_____
Printed Name	Parent or Guardian Signature (if minor)
_____	_____
Date	Date

If you have any adverse effects or concerns about the research, please contact the primary investigator or the University Research Services Department at Salisbury University at 410-548-5395 or toll free 1-888-543-0148. Additional contact information can be found at www.marylandADRresearch.org

PARTICIPANT SURVEY (PRE-SESSION - ADR)
Circuit Court FAMILY Custody/Visitation

FOR OFFICE USE ONLY **RESEARCH CASE NUMBER _____**

Name of person being interviewed_____

Plaintiff v. Defendant _____

Interviewer: Read the following Confidentiality Statement to the respondent before proceeding
Your participation in this survey is completely voluntary. You may choose to not answer any question, or stop the survey at any time. Your answers are confidential: they will not be shared with the other involved parties, the court, your lawyer, or your mediator/settlement conference attorney.

Interviewer: Use the term MEDIATION or FACILITATION, based on which is being offered by the court today.

A. Participant and Case Information

1. Are you the:
[ ] Plaintiff (person who filed) [ ] Defendant (person who responded)
[ ] Support person for Plaintiff [ ] Support person for Defendant
[ ] Other

2. Are you being represented by a lawyer?
[ ] Yes [ ] No

2a. If no, did you consult with a lawyer before coming today?
[ ] Yes [ ] No

3. Do you have anyone else with you today, such as a support person or advocate?
[ ] Yes [ ] No

4. Are you authorized to make any possible agreement related to custody and/or visitation, without checking with anyone else?
[ ] Yes [ ] No

4a. If you answered no, with whom do have to check? _____

5. Prior to today's ADR session, have you ever been involved in any of the following processes?
[ ] Mediation [ ] Arbitration
[ ] Settlement conference [ ] Not sure
[ ] Community Conferencing [ ] No, I have not

B. Participant's Opinion

6. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I would prefer that we go to trial instead of being in a mediation or facilitation today.					
I feel prepared for a possible trial.					
I hope we can resolve this case in mediation or facilitation.					
I feel pressure to participate in this mediation or facilitation.					
I believe mediation or facilitation to be a waste of time.					
I have a clear idea of what I want to get from today's mediation or facilitation.					
The location of this mediation or facilitation is convenient for me.					
I have a clear idea of what a mediator does.					
I know my legal rights as it pertains to this case.					
I am aware of court procedures related to cases of custody and visitation.					

7. What results are you hoping to get from today's mediation or settlement conference? _____

8. How was today's mediator or facilitator selected?

[ ] The court assigned the mediator or facilitator
[ ] I selected the mediator or facilitator and the other participant agreed
[ ] The other participant selected the mediator or facilitator and I agreed
[ ] Other, _____

9. Have you done anything to prepare for today's mediation? [ ] Yes [ ] No [ ] Not sure

9a. If so, what? _____

10. Have you done anything to prepare for a possible trial in this case? [ ] yes [ ] no [ ] not sure

11. Have you ever had a conversation with the other person/people involved in this case to try to come to an agreement about custody and visitation?

[ ] Yes [ ] No

12. Prior to the start of this session, have you spoken to the mediator:

[ ] A lot [ ] Not at all
[ ] A little [ ] Not sure

13. Have you participated in the court-referred parenting classes?

[ ] Yes [ ] No [ ] I was not ordered to attend a class

14. Have you already tried any of these processes to resolve the issues you're here to discuss:

[ ] Mediation [ ] Arbitration
[ ] Settlement conference [ ] Trial
[ ] Community Conferencing [ ] Not sure
[ ] No, I have not

15. Have the police been called as a result of your disagreement on custody or visitation?

[ ] yes [ ] no

If yes, how many times have the police been called? _____

Over what time period, in months? _____

16. Other than the case that brought you here today, have other cases been filed related to the issue that brought you to court today?

[ ] yes [ ] no

16a. If yes, which type of cases?

[ ] Criminal [ ] Family [ ] Civil [ ] Juvenile [ ] Appeals [ ] not sure

17. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I think there are a number of different ways to resolve our issues related to custody and/or visitation.					
It's important that my child(ren)'s needs are met in our issues related to custody and/or visitation.					
It's important that I get my needs met in our issues related to custody and/or visitation.					
It's important that I understand what the other person/people want related to custody and/or visitation.					
The other person/people need to learn that they are wrong, regarding our issues of custody and/or visitation.					
It's important that the other person/people get their needs met in our issues related to custody and/or visitation.					
It's important for me to have a positive relationship with the other person/people involved in our issues related to custody and/or visitation.					

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I feel like I have no control over what happens in our issues related to custody and/or visitation.					
The other person/people involved in our issues related to custody and/or visitation want the exact opposite of what I want.					
I can talk about my concerns to the person/people involved in our issues related to custody and/or visitation.					
It doesn't seem to make any difference what I do in regard to our issues related to custody and/or visitation, it'll just remain the same.					
In general, conflict is a negative thing.					
The court system cares about helping people resolve disputes in a fair manner.					
The child(ren) seem to be doing well with our current arrangement.					
I have the ability to make decisions in the best interest of our child(ren).					
The other parent has the ability to make decisions in the best interest of our child(ren).					
We are able to make decisions together that are in the best interest of our child(ren).					
We work well together as a team when it comes to raising our child(ren).					

C. Demographic information

18. Are you male or female? [ ] Male [ ] Female

19. How old were you on your last birthday? _____

20. How many people live in your household, including you? _____

21. What is your household income? Please check the appropriate box. [ ] Less than $10,000 [ ] $10,000 to $15,000 [ ] $15,000 to $25,000 [ ] $25,000 to $35,000 [ ] $35,000 to $50,000 [ ] $50,000 to $75,000 [ ] $75,000 to $100,000 [ ] $100,000 to $150,000 [ ] $150,000 to $200,000 [ ] $200,000 or more	22. What is your race? Please check the appropriate box [ ] White [ ] Black or African American [ ] Hispanic or Latino (e.g., Mexican, Puerto Rican, Cuban) [ ] American Indian and Alaska Native [ ] Asian (e.g., Asian Indian, Chinese, Filipino, Japanese, Korean) [ ] Native Hawaiian and Pacific Islander (e.g., Samoan, Guamanian) [ ] Other, please specify: _____ 22a. Were you born in the United State [ ] Yes [ ] No 22b. If no, how long have you lived in the US? _____

23. What language(s) are spoken in your household?

[ ] English only
[ ] English and another language (Please specify the language(s): _____)
[ ] Only a language other than English (Please specify the language(s): _____)

a. How well do you think you speak English?

[ ] Very well [ ] Not well
[ ] Well [ ] Not at all

25. Do you have a military background?

[ ] Yes, I am active duty [ ] Yes, I'm a veteran [ ] No

26. Do you have any disabilities?

[ ] Yes [ ] No

a. If yes, please specify:

27. What is your relationship to the other party in this court case?

☐ Friend/Acquaintance ☐ Boy/Girlfriend ☐Ex-boy/girlfriend
☐Domestic Partners/Spouses ☐Separated/Divorced ☐ Other Family

28. What is your highest completed level of education?

☐ No Formal Education ☐ Grammar School ☐ High School/GED
☐ Trade School/Certificate Program (post high school)
☐College ☐ Graduate degree (MA, PhD) ☐ Law School (JD, LLM)

PARTICIPANT SURVEY (POST-SESSION - ADR)
Circuit Court FAMILY Custody/Visitation

FOR OFFICE USE ONLY **RESEARCH CASE NUMBER _____**

Name of person being interviewed_____

Plaintiff v. Defendant _____

Interviewer: Read the following Confidentiality Statement to the respondent before proceeding
Your participation in this survey is completely voluntary. You may choose to not answer any question, or stop the survey at any time. Your answers are confidential. They will not be shared with the other involved parties, the court, your lawyer, or your mediator/facilitator.

Interviewer: Please use the term MEDIATION or FACILITATION, depending on which process was used.

A. Participant's Opinions
1. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
The mediator(s) or facilitator listened to what I had to say without judging me or my ideas.					
The mediator(s) or facilitator seemed to take sides.					
The mediator(s) or facilitator treated me with respect.					
I was able to express myself, my thoughts, and my concerns during the mediation / facilitation.					
I think the mediator(s) or facilitator understood what I was expressing.					
Through mediation or facilitation, I became clearer about what I want with regard to custody and visitation.					
Through the mediation or facilitation, I think I understand the other person/people involved in the conflict better.					
Through the mediation or facilitation, I think the other person/people involved in the conflict understand me better.					
I think all of the underlying issues in this conflict came out in the mediation or facilitation.					
The mediator(s) or facilitator prevented us from discussing important topics.					

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
The other person/people listened to me.					
The mediator(s) or facilitator pressured us to reach an agreement in mediation.					
Together, the other person/people and I controlled the decisions made in the mediation.					
I feel like the mediator(s) or facilitator controlled the decisions made in the mediation or settlement conference.					
I would bring other conflicts to mediation or facilitation in the future.					
I would recommend mediation or facilitation to others involved in conflicts.					
The meeting room was conducive to a comfortable mediation or facilitation.					
I am satisfied with the outcome of the mediation or facilitation.					
I am satisfied with the process of the mediation or facilitation.					
I am satisfied with my interactions with the judicial system during this case.					

B. Participant's Experience

2. Did you reach an agreement?

[ ] Full agreement: How did you reach an agreement? _____

[ ] Partial: How did you reach agreement on the points you agreed on? _____

and why didn't you reach agreement on the other points? _____

[ ] None: Why do you think you didn't reach an agreement? _____

3. Do you think the issues of custody and visitation are resolved?

[ ] Yes [ ] Partially [ ] No

Note to Interviewer: Ask questions 4-6 ONLY if they reached a full or partial agreement in their mediation:

4. If your agreement was partial, which topics were resolved and which were not resolved?

_____

5. Is your agreement permanent or temporary? [ ] Permanent [ ] Temporary [ ] Not sure

6. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I think the outcome reached today is fair.					
I think I can implement the results of the outcome reached today.					
My children's needs are met by the agreement reached today.					

Note to Interviewer: Ask for everyone, regardless of agreement status in mediation:

7. Using the following scale, express your agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I think there are a number of different ways to resolve our issues related to custody and visitation.					
It's important that my child(ren)'s needs are met in our issues related to custody and visitation.					
It's important that I get my needs met in our issues related to custody and visitation.					
It's important that I understand what the other person/people want in our issues related to custody and visitation.					
The other person/people need to learn that they are wrong in our issues related to custody and visitation.					
It's important that the other person/people get their needs met in our issues related to custody and visitation.					
It's important for me to have a positive relationship with the other person/people involved in our issues related to custody and visitation.					
I feel like I have no control over what happens in our issues related to custody and visitation.					
The other person/people involved this custody and/or visitation dispute want the exact opposite of what I want.					
I can talk about my concerns to the person/people I have conflict with.					
It doesn't seem to make any difference what I do in regard to our issues related to custody and visitation, it'll just remain the same.					

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
In general, conflict is a negative thing.					
The court system cares about helping people resolve disputes in a fair manner.					
The child(ren) seem to be doing well with our current arrangement.					
I have the ability to make decisions in the best interest of our child(ren).					
The other parent has the ability to make decisions in the best interest of our child(ren).					
We are able to make decisions together that are in the best interest of our child(ren).					
We work well together as a team when it comes to raising our child(ren).					

C. Costs

8. How much did you pay (or do you expect to pay) for all ADR sessions with this mediator? _____

8a. If a fee is charged, have you:

[ ] Paid in full [ ] Paid in part

[ ] Not yet paid [ ] Cannot pay

MEDIATOR (PRE-SESSION - ADR)
Circuit Court FAMILY Custody/Visitation

FOR OFFICE USE ONLY **RESEARCH CASE NUMBER _____**

Plaintiff v. Defendant _____

MEDIATOR NAME: _____ Date: __ / __ / __

Note: Your answers are confidential. They will not be shared with your roster manager or supervisor. Several questions ask for number of hours or mediations. Please give your best estimate. There is no need to consult records.

A. Mediator Information

1. Today I am serving in the capacity of: (PLEASE CHECK ONE)

[ ] A court employee
[ ] A Volunteer or Roster mediator
[ ] Community Mediation Volunteer
[ ] Other, please specify: _____
[ ] An independent contractor

2. Do you play in other role in the court system, such as a custody evaluator, court social worker, etc?

[ ] Yes. Please specify role: _____
[ ] No

3. How long (approximate number of years) have you served as a mediator? _____

4. To the best of your recollection, how many cases have you mediated during the following periods (in this venue and others):

a. Past six months: _____ (approx. number of cases mediated)

b. Past 12 months? _____ _ (approx. number of cases mediated, including those mediated during the past six months)

c. Your entire career as mediator? _____ (approx. number of cases mediated, including those mediated during the past twelve months)

5. How many hours was your initial training in mediation? _____

4a. In what year was your initial training? _____

5b. Approximately, how many total hours of mediation training have you had (including continuing education and advanced training)? _____

6. In addition to your answer to number 5, what if any education or training you've had that you consider preparation for mediating this type of case?

_____

7. As a mediator today, I am supervised by:

[ ] My employer [ ] A Roster manager [ ] Don't know
[ ] a coordinator at a Community Mediation Center

5a. Approximately, how often do you interact with the supervisor marked above (consider email, phone, and in-person):

[ ] Once for each mediation
[ ] Once for every two-five mediations
[ ] Once for every six-ten mediations
[ ] Less than once every ten mediations

8. Are you a member of Maryland Program for Mediator Excellence (MPME)? [ ] Yes [ ] No

9. Considering the case you are mediating today, will you use any subject matter knowledge you have (either professional training and/or experience from prior ADR sessions) in the course of today's session?

[ ] Yes [ ] No [ ] Not sure yet

10. How much were the participants charged for this case (for both sessions)? _____

10a. If a fee is charged, have the participants paid for ADR services in this case?

[ ] Yes [ ] No [ ] Not yet [ ] I don't track payment

B. Mediator Philosophy

If this is your first time completing this survey, please complete the remainder now. If you have completed this section before, and either your demographic information or your approach to mediation or your philosophy has changed since the last time you filled this out, please ask the researcher for the rest of the survey to complete again.

[ ] I have completed this section before and my mediation approach and philosophy has not changed since then. (STOP here and return to researcher)

B. Mediator Philosophy

10. In general, how often do you use subject matter knowledge you have (either professional training and/or experience from prior mediations) in the course of a mediation?

[ ] Never [ ] Rarely [ ] Sometimes [ ] Often

11. Using the following scale, please express your level of agreement or disagreement with the following statements, by placing a check mark or X in the appropriate box.

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
One thing I do as a mediator is to tell a participant that a decision is not in their best interest.					
One thing I do as a mediator is to help participants identify what they are willing to give up in order to get something that they want.					
Talking about the past is helpful in mediation.					
One important goal of mediation is for participants to understand each other's perspectives.					
One thing I do as a mediator is help participants identify what issues they want to resolve.					
One thing I do as a mediator is explain one participant's opinion to the other.					
One thing I do as a mediator is encourage participants to think of many possible solutions before making a final decision.					
I find it is helpful to participants when I suggest possibilities for how to resolve the conflict.					
Participants in mediation need to be kept from interrupting each other.					
One thing I do as a mediator is tell participants when their expectations are unreasonable.					
One thing I do as a mediator is tell participants when they are not acting in the best interest of their children.					
One thing I do as a mediator is help participants identify their underlying interests or goals in the conflict.					
One of the values of mediation or is that participants follow guidelines to treat each other civilly.					
I consider the mediation unsuccessful if participants do not reach an agreement.					
One thing I do as a mediator is educate parents on what their children may need.					

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I find it is helpful when participants are free to express themselves however they choose in mediation.					
Conflict is a problem that can be resolved in mediation.					

12. Out of a total of 100 points, distribute them to rank the following goals for your approach to child access 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.
100 TOTAL

13. Please describe your style or orientation as a mediator:

☐ Evaluative ☐ Facilitative ☐ Transformative
☐ Analytical ☐ Narrative ☐ Inclusive
☐ Other (describe): _____ ☐ No particular style or orientation

C. Demographic information

[ ] Check here if you've completed this before, stop and return to researcher.

14. Are you male or female? [ ] Male [ ] Female

15. How old were you on your last birthday? _____

16. How many people live in your household, including you? _____

21. What is your household income? Please check the appropriate box.	22. What is your race? Please check the appropriate box
[ ] Less than $10,000 [ ] $10,000 to $15,000 [ ] $15,000 to $25,000 [ ] $25,000 to $35,000 [ ] $35,000 to $50,000 [ ] $50,000 to $75,000 [ ] $75,000 to $100,000 [ ] $100,000 to $150,000 [ ] $150,000 to $200,000 [ ] $200,000 or more	[ ] White [ ] Black or African American [ ] Hispanic or Latino (e.g., Mexican, Puerto Rican, Cuban) [ ] American Indian and Alaska Native [ ] Asian (e.g., Asian Indian, Chinese, Filipino, Japanese, Korean) [ ] Native Hawaiian and Pacific Islander (e.g., Samoan, Guamanian) [ ] Other, please specify: _____ 22a. Were you born in the United States: [ ] Yes [ ] No 22b. If no, how long have you lived in the US? _____

19. What language(s) are spoken in your household?

[ ] English only
[ ] English and another language (Please specify the language(s): _____)
[ ] Only a language other than English (Please specify the language(s): _____)

19a. How well do you think you speak English?

[ ] Very well [ ] Not well
[ ] Well [ ] Not at all

20. Do you have a military background?

[ ] Yes, I am active duty, reserves, or National Guard
[ ] Yes, I'm a veteran [ ] No

21. Do you have any disabilities?

[ ] Yes [ ] No

a. If yes, please specify: _____

22. Are you an attorney?

[ ] Yes, currently practicing [ ] Yes, not currently practicing [ ] No

23. What is your highest completed level of education?

☐ No Formal Education ☐ Grammar School ☐ High School/GED
☐ Trade School/Certificate Program (post high school)
☐College ☐ Graduate degree (MA, PhD) ☐ Law School (JD, LLM)

24. Please briefly describe your professional background and experience:

_____

_____

PARTICIPANT SURVEY (Six months post - ADR)
Circuit Court FAMILY Custody/Visitation

FOR OFFICE USE ONLY **RESEARCH CASE NUMBER _____**

Name of person being interviewed_____

Plaintiff v. Defendant _____

Interviewer: Read the following Confidentiality Statement to the respondent before proceeding
Your participation in this survey is completely voluntary. You may choose to not answer any question, or stop the survey at any time. Your answers are confidential: they will not be shared with the other involved parties, the court, your attorney, or your mediator/settlement conference attorney.

Interviewer: Use the term MEDIATION or FACILITATION, based on which process was used, and the most appropriate term for the outcome reached (marked below):
__ Mediated Agreement __ Settlement Conference Agreement __ Negotiated Agreement
__ Judicial Order (from merits hearing)

1. Using the following scale, please rate agreement or disagreement with the following statements:

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I think there are a number of different ways to resolve our issues related to custody and visitation.					
It's important that my child(ren)'s needs are met in our issues related to custody and visitation.					
It's important that I get my needs met in our issues related to custody and visitation.					
It's important that I understand what the other person/people want in our issues related to custody and visitation.					
The other person/people need to learn that they are wrong in our issues related to custody and visitation.					
It's important that the other person/people get their needs met in our issues related to custody and visitation.					
It's important for me to have a positive relationship with the other person/people					

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
involved in our issues related to custody and visitation.					
I feel like I have no control over what happens in our issues related to custody and visitation.					
The other person/people involved this custody and/or visitation dispute want the exact opposite of what I want					
I can talk about my concerns to the person/people I have conflict with.					
It doesn't seem to make any difference what I do in regard to our issues related to custody and visitation, it'll just remain the same.					
In general, conflict is a negative thing.					
The court system cares about helping people resolve disputes in a fair manner.					
I feel like the issues of custody and visitation are resolved.					
I am satisfied with my interactions with the judicial system in this case.					
The children seem to be doing well with our current arrangement.					
I have the ability to make decisions in the best interest of our child(ren).					
The other parent has the ability to make decisions in the best interest of our child(ren).					
We are able to make decisions together that are in the best interest of our child(ren).					
We work well together as a team when it comes to raising our child(ren).					

B. Compliance

2. How likely are you to recommend mediation or facilitation to others involved in a disputed custody situation?

[ ] Very unlikely [ ] Unlikely [ ] Neither [ ] Likely [ ] Very likely

3. Six months after your [mediation or facilitation], how satisfied are you with the final outcome reached?

[ ] Very dissatisfied [ ] Dissatisfied [ ] Neither [ ] Satisfied [ ] Very satisfied

4. How well is the outcome you reached working for you?

[ ] Not at all [ ] A little [ ] Partially [ ] Mostly [ ] Completely

5. How well is the outcome reached working for your children?

[ ] Not at all [ ] A little [ ] Partially [ ] Mostly [ ] Completely

6. How well do you think you followed through on the outcome? (If answered anything other than completely, go on to questions 5a and 5b)

[ ] Not at all [ ] A little [ ] Partially [ ] Mostly [ ] Completely

6a. What parts of the agreement/judicial decision did you follow through on? Why?

6b. What parts of the agreement/judicial decision did you not follow through on? Why?

7. How well did the others follow through on the outcome? (If answered anything other than completely, go on to questions 6a and 6b)

[ ] Not at all [ ] A little [ ] Partially [ ] Mostly [ ] Completely

7a. What parts of the agreement/judicial decision did they follow through on?

7b. What parts of the agreement/judicial decision did they not follow through on?

8. In the last six months, have you had any contact with the other person/people involved in the custody and/or visitation decisions?

[ ] More twice a week [ ] 1-2 times a week [ ] 2-3 times a month

[ ] Once a month [ ] yes, but less than once a month [ ] none at all

8a. Are the interactions worse, the same, or better than six months ago?

[ ] Worse [ ] Same [ ] Better [ ] N/A

9. Since the final outcome was reached, have new problems arisen between you and the other person/people?

[ ] Yes [ ] No

9a.If yes, what are they?

9b. If yes, how have you dealt with them?

10. In the last six months since the mediation /facilitation, have you had any personal inconveniences (e.g. missed work, change in your routine, lack of sleep, health issues, situation weighing on your mind etc.) as a result of custody and/or visitation decisions?

[ ] Yes [ ] No

10a.If yes, what were they?

11. In the last six months, have you had any personal financial costs as a result of the custody and/or visitation decisions, other than any agreed upon or court-ordered amount?

[ ] Yes [ ] No

11a. If yes, what were they and how much did you spend?

12. If you care for dependents (children or other dependents), did you require any added help with care in order to participate in legal or mediation activities for this situation?

[ ] yes [ ] no

12b. About how many total hours of additional care did you require to attend legal or mediation activities for this case? _____

12c. In total, how much did it cost you to have added care to attend these activities (do not include care costs that you would normally incur with or without attending these activities): _____

13. If you were represented by an attorney, what was the total paid in attorney's fees for this case?

14. Has there been any violence between you and the other person involved in this situation?

[ ] Yes [ ] No

14a. If yes, please describe it.

15. Has your approach to conflicts involving other people changed since the mediation /facilitation?

[ ] Yes [ ] No

15a. If yes, how?

16. What else has happened around custody and visitation issues that I have not asked you about?

Appendix E: Coding Books

Mediator Codes

General Directions

A **unit of speech** is defined as everything said by one person before someone else speaks with a substantive comment. Any confirmation language (e.g. ok, uh-huh, yes, exactly) does not change a unit of speech, unless it's in response to a fact or request reaction. A "no" or denial, does change the unit of speech. If a person speaks for more than 30 seconds, each 30 seconds counts as a new unit of speech. The code itself starts the 30 second unit for that code. Each code does not get coded in the same 30 seconds or in the same unit of speech, whichever is shorter. If the same individual is speaking 30 seconds after the code was last noted and performs the same behavior, then the behavior should be coded again. Each unit can have more than one code.

Note that **some codes take precedence** over others. This means that the same comment should not be coded as both, however, in a unit of speech, both may occur separately and should both be coded as such. For example, "it sounds like you feel outraged by what happened," would be coded only as *Emotions*, which takes precedent over *Reflection*. However, if the mediator says, "*it sounds like you feel outraged by what happened*, and it sounds like you are upset because she brought home a zebra without asking for your permission," the italicized section would be coded as *Emotions* and the other section would be coded as *Reflection*.

Mediator codes are done through point-and-click selection. To code mediators in Noldus, click the subject and then the behavior. There are no abbreviations to the codes, as keystrokes are not used. Several codes will also then have a choice of modifiers. All codes are point-codes, with the exception of Joint/Caucus session, which is a state code (i.e., the state should always be set at joint or caucus, and all point codes occur within that state).

Mediator Opinion/Social Assessment

Any statement in which the mediator talks about their own personal experiences or previous mediation experiences, as they relate to the situation.

Examples:

-"Having children totally changed my life."

-"What I've come to understand is that teen-agers always push back against limits, but they really appreciate that you are setting them."

-"People often don't feel heard in the workplace."

- "I've found that sometimes things get harder before they get easier in mediation."

-"We lawyers know how tough it is to predict what a jury will do."

-"I sure ran into a lot of traffic getting here today."

Any statement in which the mediator expresses their opinion about the mediation process, or the way they would describe the process. A mediator's explanation of what is going to happen in the process (without qualifiers) is not opinion.
Examples:

-"Mediation is a straightforward process."
-"Mediation works best when everyone comes with an open mind."
-"The 3 really important things to understand about mediation is…"

Any time a mediator provides personal information about themselves or answers a personal question a participant asks of them in a way which provides information.
Examples:

-"I'm an attorney and I have a masters in Conflict Resolution."
-"I have four children, myself."
-"I've been trained by Community Mediation Maryland."
-Participant: "Are you married?"
Mediator: "No, I'm not."

Note: A comment about how they will run the process but not about the mediator themselves, would not be coded as Mediator Opinion. (e.g. "I won't be acting as an attorney in this process."; "I will be using the transformative mediation process with you today.")

Any statement expressing the mediators' opinion about the situation.
Examples:

-"That's interesting."
-"This is fascinating."
-"That's good to hear."

Any statement in which a mediator brings up a piece of information they got from before the mediation, either from the intake file, the court file, previous conversations with the participants, etc. with an indication that they are bringing it from one of these places.
Example:

-"I see here in the file that…"
-"In our phone conversations, you said to me…"

Any statement in which the mediator expresses their opinion about a potential solution.
Example:

-"Now that just doesn't seem feasible to me."
-"That's not going to work."

Any statement in which the mediator expresses his/her opinion about what the group has said with some degree of certainty or conclusion (e.g. "clearly…", or "obviously…")
Example:

- "Obviously, you all care very much for your father's well-being."

-"Clearly you have a very strong disagreement…"
Note: Sometimes the differences between a statement being coded as *Mediator Opinion* and *Reflection* is the degree of certainty. For example, if a mediator says, "What I'm hearing you say is that you care about your father's well-being and it's hard to see him sick, is that right?" it would be coded as *Reflection*. If a mediator says, "Clearly you care about your fathers well-being and it's hard for you to see him sick" it would be coded as *Mediator Opinion*.

Any statement in which the mediator explains their analysis of the dynamics of the relationship.
Examples:

- "I think what's really going on is that you're taking out your hostility towards others on each other."
- "I sense some jostling between the two of you"
- "You're both asserting your need for autonomy here…"
- "I think neither of you are focusing on what's good for the relationship."
- "I can see this situation escalating if you don't deal with these issues now."

Mediator Opinion is coded on a statement that might otherwise be not coded, if the mediator adds a qualitative modifier.
Examples:

-"You both have different ideas about…"
-"You both shared very strong opinions about…"
-"There are lots of facts here…"

If the mediator had said, "you've both shared ideas and now we're going to move on to…" this would not be coded as anything. The inclusion of the mediators' assessment that they were "different" or "strong" makes the comment a *Mediator Opinion*. Note: "So, you have a disagreement about xyz" is a reflection, not an opinion.

A statement in which a mediator finishes a sentence for a participant:
Examples:
-Participant: "The thing is, I'm just more…."
Mediator: "Creative?"
-Participant: "When I hired him, we were trying to write up a, uh, you know…"
Mediator: "Contract?"

Any statement in which the mediator praises both participants behavior in mediation.
Example:

-"You're both doing a good job here."
-"You're both working really hard to find a solution."
-"I am confident you can reach an agreement here today."
-"We are making major progress and I commend both of you – keep it up."

Note: To be coded as *Mediator Opinion,* the statement must be the mediator explaining their ideas about what is going on in the relationship or conversation. Mediator attempts to understand the value

or interest behind what participants are saying are coded as *Interest/Value*. So, for example if a participant said, "I hate him for always trying to tell me what to do. He's just like my father." A mediator response of, "It sounds like your autonomy is important to you," would be coded as *Interest/Value*. A mediator response of, "so really this goes back to your childhood resentments," would be coded as Mediator *Opinion*. A mediator response of "So it sounds like he reminds you of your father when he tells you what to do," would be coded as *Reflection*.

Advocate/Support

(specify participant with modifier)

Any statement in which the mediator indicates support for or agreement with one participant's position/ideas. Questions are not coded as Advocate/Support.

-"I think Kristy is being reasonable here."
-"Leticia's idea seems doable to me…"
-"Yeah, you're right."

Note: For a behavior to be coded as *Advocate/Support*, the mediator must be backing up something the participant expressed. For example, if a participant is indicating that a situation was difficult, and a mediator says, "I can imagine that was really hard for you," then it would be *Advocate/Support*. But if the participant said, "then they broke into my house and stole my CD player, but it's all good because I wanted to upgrade to an iPod anyway," and a mediator says, "that must have been hard for you," then it would be *Mediator Opinion* not *Advocate/Support*.

Note: "I understand" by itself, is not *Advocate Support*. It may be *Advocate Support* if there is a direct qualifier, such as "I understand where you're coming from here."

Any statement in which the mediator advocates for one participant's position/ideas.

-"I really think you should go with Tanya's idea here."

Any statement in which a mediator praises one participant's behavior in mediation.
Example:
-"Juanita, you have really made a lot of concessions here. Thank you."
-"Fatima, you've been really trying hard to express yourself here and we appreciate it."
-"Sinead, you mentioned an important point here."

Any statement in which the mediator criticizes one participants' behavior or approach:

-"Brian, you have not been listening to Pat's ideas and I really think you need to."
-"Holly, you need to be giving on some of these issues as well."

Any statement in which the mediator frames the topic in terms of one participants' view of the situation:

- "It seems we need to address the stolen credit cards next." (If the participant being accused of

stealing them has not acknowledged that they were stolen.)
-"Our agenda now includes (1) Tim's lateness; (2) Tim's disrespectful language, what else do you want to discuss?"

Note: If a participant has made a suggestion and a mediator advocates for the idea (any time during the mediation after the suggestion was made), even without saying the person's name, the statement should be coded as *Advocate/Support*.

Note: If a mediator supports both participants at the same time (e.g. "I can understand where you're both coming from," it is *Mediator Opinion*, not *Advocate/Support*. However, if a mediator praises one then another in two separate sentences (e.g. "Isabel, I can understand where you're coming from, and Jose, I can know you've been trying hard to be compassionate.") then it would be *Advocate/Support* for Isabel and then *Advocate/Support* for Jose.

Note: *Advocate/Support* takes precedence over Mediator *Opinion*.

Note: At the end of a caucus, a mediator telling a participant that they will bring a proposal to the other participant (e.g. "I'll take this proposal to her and see what she says") would not be coded. If the mediator indicates that they will push for it (e.g. "I'll take this proposal and really push hard on it.") then it would be coded as *Advocate/Support*.

Legal Assessment/Information:

Any statement in which the mediator makes a prediction about what might occur in court.
Examples:
-"My experience with Judges in District Court is that they tend to…"
-"These kinds of cases rarely settle for more than $5,000."
Any statement in which the mediator evaluates the strengths and weaknesses of the participants' case.
Examples:
-"Generally, all things being equal, the judge will give custody to the mother. But in this case, you also have the fact that the father has been the primary care provider, so that would also be considered."
This can be any basic information that relates to how the participants interact with the court:
-"When you're finished here, you'll need to take this back to the judge, and enter it as an enforceable motion."
-"The Court has ordered you to two sessions of mediation, and wants you to work toward agreement on custody, visitation, and child support."
-"The rules of evidence prevent information gathered in mediation from being brought into court in a civil trial."
Any statement in which the mediator instructs participants with legal information:
Example:
-Participant: "I want to be the main person making these decisions."
Mediator: "In the court process, that would be called sole legal custody."

-Participant: “I want to be the one the kids live with all the time.”

Mediator: “So, technically, that would be sole physical custody.”

-Mediator: “Physical custody is about where do children live and go to school.”

Questions that provide information about a legal situation.

-“Do you realize that juries don’t award sums this high these days?”

Note: *Legal Assessment/Information* takes precedence over *Advocate/Support*, *Pressure to Settle*, and *Mediator Opinion*.

Behavior Direction

Any statement in which a mediator sets guidelines or rules for participants to follow during the mediation.

Examples:

-“We’ll be asking you to speak one at a time. If you have ideas while the others are talking, please write them on your note pad.”

-“We are asking you to speak respectfully to each other during this mediation.”

-“Please turn off your cell phones.”

Any statement in which the mediator choreographs participants’ behavior in a certain way.

Examples:

-“Leticia, could you please look Natasha in the eyes when you give that apology.”

-“Fatima, now is the time to say it directly to Matt.”

Any statement in which the mediator attempts to tell participants how to behave in response to swearing, cursing, yelling, interrupting, or insults, or breaking any other rules the mediator has established. Or any statement in which a mediator tells participants how to act in the mediation.

Examples:

-“Susan, Linda, we have guidelines here.”

-“Shouting at each other really isn’t helpful.”

-“Lorig, earlier you agreed not to swear. Now this is the third time I’ve had to remind you.”

-“If you both keep this up, we’ll have to end the mediation.”

-"Could you please talk only to me right now?"

-“We can’t discuss that at this stage in the mediation. Please hold that thought.”

When mediators repeat the participants names over and over or say "ladies, ladies…" or "gentlemen, gentlemen,…" in an attempt to get attention to restore order.

Any time a mediator uses a private session or a break in response to swearing, cursing, yelling, interrupting or insults to a participant.

Note: A mediator's physical movement, when not accompanied by words, is not coded as *Behavior Direction*.

Note*: Behavior Direction* takes precedence over *Mediator Solution*.
Note: Process descriptions (e.g. "in this phase of the process, we are interested in hearing from everyone about what brought you to mediation.") are not coded as *Behavior Direction* unless they also include requests for a certain type of behavior (e.g. "in this phase of the process, we are interested in hearing from everyone about what brought you to mediation. So please write down your thoughts while the other person is speaking."), in which case the second sentence would be coded as *Behavior Direction*. If a mediator is describing what they will do (e.g. "At the end of the session, we will destroy our notes") it's only a process description and not coded. If the mediator tells participants what they must do (e.g. "At the end of the mediation, we'll destroy our notes, then we'll collect yours and destroy them as well.") the second part will be coded as *Behavior Direction*.

Note: *Behavior Direction* takes precedence over *Mediator Opinion* (e.g., "Mediation works best when everyone speaks gently to each other, and doesn't interrupt each other" is *Behavioral Direction*)

Emotions

Any statement from the mediator which addresses participants' feelings. This only applies to emotions of participants in the room, not conversations about emotions of people not present.

Repetition of a feeling that a participant has said directly.
Example:
-Participant: "I felt furious when he showed up like that." Mediator: "So, you felt furious."

Mediator statement that encourages participants to express their own feelings.
Example:
"How did that feel when that happened?"
Note: "How do you feel about that?" would be coded as *Emotions*, unless it's asking about a solution, thus meaning "what do you think about that idea?" Then it's *Request Reaction*.

Any statement in which a mediator reflects a feeling that a participant has indicated but not stated directly.
Example:
-"If I understand you, you're saying you felt embarrassed by that. Is that right?"
-"So it sounds like you're saying you're proud of…"

Any statement or question in which a mediator begins with "feel…." and follows with an emotion or quasi-emotion word.
Examples:

-“It sounds like you feel betrayed.”

-“It sounds like you felt hurt.”

-“Did you feel frightened when that happened?”

Note: “It sounds like you feel that….” or “It sounds like you feel as if….” would not be coded as *Emotions*. For example, “It sounds like you feel that she should not have done that” would not be coded as *Emotions* because it does not use a feeling word. It would be coded as *Reflection*.

Words that are inherently emotional are coded as Emotion, even if they are not prefaced by “you feel…” Examples:

-“Sounds like you were hurt when that happened.”

-“If I’m hearing you right, there was a lot of sadness in your heart when you had to fire her.”

-“So, you really miss your mother?”

-“Were you hurt by that?”

One way to test if something is inherently an emotion word is to check what “you were…” sounds like with it. “You were hurt” is inherently an emotional concept. “You were betrayed” indicates someone else’s action, rather than an emotion. So, while “you felt betrayed” would be coded as *Emotion*, betrayed would not be coded as *Emotion* if it was not accompanied by “feel”.

The following words are examples of inherently emotional words that would always be coded as Emotions, even if “you feel…” does not preface them:

Afraid	Disgusted	Happy	Proud
Aggravated	Distraught	Homesick	Relieved
Agitated	Disturbed	Hopeful	Remorse
Alarmed	Ecstatic	Hopeless	Sad
Amazed	Elated	Hurt	Scared
Angry	Embarrassed	Infuriated	Sorrowful
Annoyed	Exasperated	Lonely	Startled
Anxious	Excited	Mad	Surprised
Appreciative	Exhilarated	Melancholy	Terrified
Astounded	Fearful	Miss	Thankful
Confused	Fed Up	Moved	Tired
Crushed	Flustered	Nervous	Touched
Delighted	Frightened	Outraged	Unsettled
Depressed	Fulfilled	Overjoyed	Upset
Despondent	Furious	Overwhelmed	Worried
Disappointed	Grateful	Panicked	
Discouraged	Gratified	Petrified	

For these words, if they appear in a question, it should be coded as an emotion (e.g. “Was that sad for you?”)

Note: Phrases should not be counted as *Emotions*, even if preceded by "feel" (e.g. "it sounds like you felt out of the loop" or "it sounds like you felt hung out to dry.") "Heartbroken" and "let down" would count as emotions if they were preceded by "feel".

Note: If the question is the other person's feelings, such as "How do you think she felt when you said that to her?" it should be coded as *Explain*.

Note: *Emotion* takes precedence over *Reflection*. The first few words explaining the feeling are not coded as *Reflection* (e.g. "It sounds like you felt hurt when she did not call."). But if the statement goes on (e.g. "It sounds like you felt hurt when she did not call, because you make a point of always calling back and expected that she would as well.") the first clause would be coded as *Emotions* and the second clause would be coded as *Reflection*.

Note: Concerned is not coded as *Emotion*, even when a mediators says, "it sounds like you feel concerned."

Reflection

Any statement which paraphrases what either participant has said about the main issues in the conflict and repeats it back, with or without checking for accuracy.
Example:
-"What I'm hearing you say is that you are tired of having to park around the corner. Is that right?"
-"So it sounds like you want to get along with your sister better, is that right?"
-"What I'm hearing you say is that you don't want him to feed the children macaroni and cheese."
-"So it sounds like you're saying that idea is unacceptable to you."
-"Earlier you said…"

Any statement in which the mediator repeats back what participants have said, with a questioning tone as if to check to see if they got it right.
Example:

-Participant: "And then I get home and he's always parked in front of my house so I have to park around the corner and walk the whole way."

Mediator: "So you want to be able to park in front of your house?"

Note on the difference between *Reflection* and *Fact/Closed Ended Question*:
The following would be coded as *Reflection*:

-Participant: "We've been serving in this agency together for 10 years and always been in the same small division.

Mediator: "So, you've worked together on a regular basis?"

Whereas the following would be coded as *Fact/Closed-Ended Question*:
-Participant: "We've been serving in this agency together for 10 years and always been in the same small division.

Mediator: “Do you work together on a regular basis?”

Note: A check-in phrase at the end of the reflection is considered part of a reflection, not a new question. Check in phrases may include, is that right?; is that accurate?; is that fair?; did I get that right?; or is that fair?

Note on the difference between *Reflection* and *Fact/Closed Ended Question*:
If the mediators comment is related as a summary from a statement the participant has said, then it’s a reflection unless it’s starts with the word “do”?
The following would be coded as *Reflection*:

-Participant: “We’ve been serving in this agency together for 10 years and always been in the same small division.

Mediator: “So, you’ve worked together on a regular basis?”

Whereas the following would be coded as *Fact/Closed-Ended Question*:
-Participant: “We’ve been serving in this agency together for 10 years and always been in the same small division.

Mediator: “Do you work together on a regular basis?”

Summary of “Facts”

A summary of specific legal or technical facts in the case. This should only be coded if the “facts” include quantitative figures and the mediator lists at least two of the “facts” in the summary.
Example:

-“In summary, the computer was worth $1,000 when it was first purchased. On eBay, the value of an equivalent computer is $500, and the website Sell Your PC values it at $600.”

-“So Tyler, you’ve lived here for 10 years. Ericka, you moved in 3 years ago. 2 years ago you started sleeping together, and the cat has been there for 1 year. Is that right?”

Fact Questions/Closed Ended Questions

Any question to which yes/no can be answered should be coded as *Fact*, except if a mediator says, “is that right?” or similar check-in phrase after paraphrasing.
Examples:
-“Is there poop on your lawn every morning?”
-“So, did you tell her you never want to see her again?”
-“Do you see each other often?”
-“Do you have the authority to make decisions here today?”
-“Do you have photos of your home?”

Note: If the question is focused on solutions, it should be coded as one of the solution codes (e.g. *Request Reaction*, etc.) not as *Fact*.

Any question which asks for one specific detail or attempts to establish a piece of information as true.
Examples:
-"So, Ericka, you said Yvonne gets to work at 11am. Yvonne, is that true?"
-"How old are you?"
-"On what date did that payment occur?"
-"What are you seeking in damages?"
-"Did the court refer you to mediation?"
-"How often is this a problem?"

Questions that attempt to determine who was or should be responsible for something that occurred in the past.
Examples:
-"Who was supposed to pick up the children that day?"
-"What does the dress code say about what she should have been wearing?"
-"Is it your dog pooping on her lawn?"
Note: Environmental questions or "living room questions" are not coded at all (e.g. "do you want some water?", "Is the temperature in here okay for you?")

Note on the difference between Fact Question and Suggestion Question:
If participants are talking about options and the mediators question clearly adds another option, then it should be coded as *Suggestions Question*.
Example:
-Participant 1: I don't know why you keep using my e-mail address, I keep telling you I never check it. I only use Facebook.
Participant 2: I prefer e-mail, because Facebook sells your information.
Mediator: "Do you both have telephones?"
-Participant 1: "I can't do everything for Dad – his meds, his doctor visits, the cooking"
Participant 2: "Well, I can't move out there to help"
Mediator: "Is your mother involved?"

Whereas a similar question when participants are not discussing (or yelling about) options would be coded as a *Fact Question*.
-Participant 1: "So we have this new office and it has lots of equipment, but it's missing some."
Participant 2: "Right, we have computers and file cabinets, but no fax machine."
Mediator: "Do you have telephones?"
-Participant 1: "So, Dad's really sick, and I don't know how long he has to live."
Participant 2: "I know, but I can't figure out what I should do about it."
Mediator: "Is your mother involved?"

Note on the difference between *Reflection* and *Fact/Closed Ended Question*:

If the mediators comment is related as a summary from a statement the participant has said, then it's a reflection unless it's starts with the word "do"?
The following would be coded as *Reflection*:

-Participant: "We've been serving in this agency together for 10 years and always been in the same small division.

Mediator: "So, you've worked together on a regular basis?"

Whereas the following would be coded as *Fact/Closed-Ended Question*:
-Participant: "We've been serving in this agency together for 10 years and always been in the same small division.

Mediator: "Do you work together on a regular basis?"

Perception Questions/Open-ended Questions

Any question which attempts to get participants to talk about their perspective on the situation, these are generally open-ended questions.
Examples:

-"What are the issues which brought you to mediation?"
-"How do you currently divide the workload?"
-"Tell me about your neighborhood."
-"Tell me more about your experiences in this situation?"
-"What are your thoughts about how bills get paid?"
-"How do you feel about that?"

Any question which attempts to get beyond the surface position to an underlying goal or value.
Example:

-"Help me understand what about that is important to you?"
-"What do you mean by whore?"
-"What would that do for you?"
-"What do you mean by controlling you?"

Grammatically closed questions, which are socially considered an invitation to speak broadly about an issue should be coded as Perception Questions/Open-ended Questions.
Examples:

-"Is there anything you want to say to each other?"
-"Do you want to say more about that"?
-"Do you want to respond?"
-"You haven't had a chance to share about this issue." (followed by silence for the sharing)

Hypothetical questions, about a different past:
Examples:

-"What would you have preferred to have happened?"

-“What did you wish you had said?”
-“Where would you have wanted to put the refrigerator?”
-“What would you have charged for it?”

Note: Repeating one or two words at the beginning of a questions (e.g. “when you say ‘structured environment’ what do you mean by that?”) is still just *Open Ended Question*. Whereas, a short reflection followed by a question (e.g. “Earlier you said something about a structured environment. What did you mean by that?”) would be *Reflection* and *Open-Ended Question*.

Note: If the question is focused on solutions, it should be coded as one of the solution codes (e.g. *Ask for Solution/BS, Request Reaction*, etc.) not as *Perception Question*. *Request Reaction* takes precedent over *Perception Question*.

Suggestion Question S-Q

Any question in which a mediator suggests a solution to the problem.
Example:

- “Have you considered…?”
- “Is it possible that…could work?”

Note: Only code as *Suggestion Question* if a mediator is asking instead of suggesting a particular solution. If a mediator is directly suggesting a particular solution, it should be coded as *Mediator Solution*.

Any question in which a mediator steers participants towards a particular type of solution.
Examples:
-“What role do you think a leash might play in the solution to the dog problem?”
-“What does the community association say about…?”
-“Have you tried checking the internet for pricing?”

Any question in which a mediator steers participants towards mediation guidelines or in a particular direction for the mediation process itself.
Examples:
-“Do you want to consider how you talk to each other- such as taking turns or something?”
-“What do you want to do about confidentiality?” (If participant have not raised it as something to be discussed.)
-“Is there anyone else you need to talk to in order to make decisions here today?”
-“Is there anything you could say to each other that might change each other’s’ point of view?”
-“What can you say to each other about what you appreciate about the other person?”

"What if…" questions, raised during a discussion of resolution options, in which a mediator brings in any new concept to the conversation that participants have not brought up should be coded as *Suggestion Questions*.
Examples:
-"What if it's raining? Then what will you do about mowing the lawn?" (if participants have never talked about rain as a concern)
-"If one of you doesn't follow through on this agreement, what will you do?" (if neither participant has brought up the idea of not following through)
Note: A mediator asking who, what, when, where, or how as a follow-up to a solution, without raising a new concept, would not be coded as *Suggestion Question*, but rather as *Ask For Solution/Brainstorm*.
Example of *Ask for Solution/Brainstorm*:

-Participant: "We'll meet once a week to review the projects and plan for the future."
Mediator: "When would these meetings take place?"

Example of *Suggestion Question*:

-Participant: "We'll meet once a week to review the projects and plan for the future."
Mediator: "Who will set the agenda for these meetings?" (if participants have not talked about an agenda)

Note: *Suggestion Question* takes precedence over *Fact Question*.
Note: This should be coded each time the mediator uses this strategy, even if they already introduced the idea before.

Interests/Value I/V

A reflection or paraphrasing in which a mediator tries to name the value or goal behind the position a participant articulates. This would include attempting to understand the interest or value that the participant has for their children or someone for whom they are speaking.
Example:

- Part: "She's a liar." Med: "It sounds like honesty is important to you."
- Part: "It's his way or the highway and it doesn't matter what the rest of us say."

Med: "So, is it involvement you're looking for?"
-Participant: "I don't want her wearing Daisy Duke shorts."
Mediator: "What are your concerns about Daisy Duke shorts?" (*Open-ended/Perception*)
Participant: "I'm afraid she'll grow up thinking her only value is in her appearance to men. Then she will find she doesn't measure up to the perfect beauty queen and then she'll love herself less."
Mediator: "So it sounds like it's important to you to raise your daughter to feel an inherent sense of self-worth and to love herself unconditionally. Is that right?" (*Interest/Value*)
Note: The following would not be *Interest/Value*, it would be *Reflection:*
Part: "She's a liar." Med.: "It sounds like people not lying is important to you."

Note: A mediator repeating back a value a participant has just said in the segment for which the mediator is reflecting, would be coded as *Reflection* not as *Interests/Value*. (e.g. Participant: "I want privacy." Mediator: "So you want privacy"; Participant: "I want to be talked to respectfully", Mediator: "So you want respect")
Note: *Interest/Value* takes precedence over *Reflection*.

Reject Topics

A comment by the mediator which focuses on eliminating a topic from conversation.
Example:

-"I know you don't like the way he talked to you that day, but in this mediation we are focusing on the payment for the broken window."

-"That's not really relevant to this discussion, which is about custody."

Focusing/Narrowing Topics

Any comment by a mediator which repeats, clarifies, or focuses the conversation onto specific topics for discussion.
Examples:

-"Is the amount of money owed something you want to work on?"

-"You've identified back money owed and how the cell phone is used as two issues you want to work on."

-"If you were to resolve all of the issues listed here, would this conflict be resolved?"

Any formal action by the mediator involving making a physical list of topics.
Example:

-Mediators writes topics on a flip chart paper.

Questions that ask participants to prioritize the order of topics in which they want to work.
Example:

-"How would you prioritize the importance of these topics?"

-"Which topic do you want to address first?"

Note: *Focusing/Narrowing Topics* takes precedence over *Reflection*, *Open-Ended/Perception Questions*, and over *Mediator Solution*.
Note: Naming the topic only in the context of a solution question (e.g. What can you do to solve the conflict around the Schedule?") would not be *Focus/Narrowing Topics*, but would be *Ask for Solution/Brainstorm*.

Introducing Topics

When a mediator raises an issue that has not been raised by participants.
Examples:

-“If you are discussing custody, we really should also look at a holiday schedule.”

-“I know you came to discuss the salary and benefits package, but it seems you should also really look at the job description, since that will affect those two things.”

-Handing out a sample list of topics.

-Reading a sample list of topics out loud.

Note: *Introducing Topics* takes Precedence over *Mediator Opinion* and *Legal Assessment/Information*.

Common Ground CG

Any statement by the mediator which points out what participants have in common, a perspective they share, or something they agree on.

Example:

-“It sounds like you’re both worried about your children.”

-“It sounds like you’re both committed to your neighborhood.”

-“So you both really want to find some answers here today.”

-“I’m hearing that you’re both really lonely and need each other, is that right?”

Note: This code takes precedence over *Reflection*.

Note: Identifying an issue both have in common ("It sounds like you both want to talk about the rent") would be coded as *Focusing/Narrowing Topics* not as *Common Ground*.

Note: Not every reflection to both people is inherently common ground. For example, “I’m hearing you both say you’ve worked here a while and the current situation is new,” does not highlight something the participants share and, therefore, would not be coded as *Common Ground*.

-P1, P2 both talking about their son John and his athleticism

-Med “So it sounds like you’re both really proud of your son.” (*Common Ground + Emotion*)

-Med “So you have a son named John who plays sports.” (*Reflection)*

Explanation Exp

Any statement in which the mediator offers “re-interpretation” or explanation one participant’s behavior or position to the other participant, using a name or pro-noun in the commentary.

Examples:

-“What George is saying is that he wants really….”

- "What did you just hear her say?"

Any statement in which a mediator states one participant's position to the other participant.

-"What Tim just said was that he thinks children should watch R-rated movies."

Any statement in which the mediator asks participants to consider the other's perspective.
Example:

-"How do you think she felt when you told her that?"

Note: *Explain* will often appear similar to *Advocate/Support*. In *Explain*, the mediator is offering information directly from the participant, without weighing in on the legitimacy of that information. In *Advocate/Support*, the mediator is advocating that information from the participant is legitimate, true, worthwhile, important, etc.

Negotiation Questions/Compromise

Questions that encourage positional negotiation and splitting the difference. These generally use compromise language or language that assumes trade-offs.
Example:

-"What are you willing to offer here?"
-"Could you split the difference?"
-"Let's talk about the BATNA and WATNA."
-"Which of these demands would you be willing to give up?"
-"Is keeping the llama more or less important than getting the diamond ring?"
-"Is there a baseline number?"
-"How can you make this offer more palatable? Sweeten the deal?"
-"How can you compromise here?"

Note: *Negotiation Questions* take precedence over *Ask for Solution/Brainstorm*.

Note: *Suggestion Question* takes precedence over *Negotiation Question*.
If a question is offering a concrete suggestion of how to solve the conflict, it is a *Suggestion Question.* If the mediator is offering a conceptual idea about compromising as how to solve the conflict, it is a *Negotiation Question*.
Example:

-"She's offering $200. How about you offer $100?" (SpS + Suggestion Question)
-"She's offering $200. Is there a way you can meet her in the middle?" (SpS + NQ)

Ask for Solution/Brainstorm

In general future focused questions are likely to be Ask for Solution.

Any question in which a mediator asks participants for a suggestion or solution to the conflict.
Example:

-"What do you think would solve the problem?"
-"What could you do to make this work for you?"
-"How could you get your needs met here?"

-“What do you think you can do about the schedule?”
-“What do you want to see happen?
-“What would be satisfactory to you?”

A question when the mediator asks participants to describe what they think or plan to have happen in any particular future scenario.
Example:
-“What do you think will happen if you go to court?”
-“What do you plan to do if you get fired?”
-“What would you do if you mechanize the plant?”

Any open-ended question by the mediator in an attempt to get specifics related to a possible solution, or asks for some kind of clarification about the suggestion. These questions would be who, what, when, where, how as follow-ups to a participant solution, without introducing a new direction. Any follow-up considering the ideas would also be Ask for Solutions.
-"When would that happen?"
- Participant: "From now on we'll have honest and open communication?"
Mediator: "What do you mean by honest and open?"
-“What are the advantages and disadvantages of mechanizing?”
-“What situations would this work or not work in?”
Note: A mediator asking who, what, when, where, or how as a follow-up to a solution, without raising a new concept would be coded as *Ask For Solution/Brainstorm*. However, if a mediator adds a new concept in their question, then it would be coded as *Suggestion Question*.
Example of *Ask for Solution/Brainstorm*:
-Participant: “We’ll meet once a week to review the projects and plan for the future.”
Mediator: “When would these meetings take place?”
Example of *Suggestion Question*:
-Participant: “We’ll meet once a week to review the projects and plan for the future.”
Mediator: “Who will set the agenda for these meetings?” (if participants have not talked about an agenda).

Any question in which a mediator asks participants for solutions using a plural -- implying asking for more than one possibility.
-"What are some ideas that might work?"
-"What else?"

Any question in which the mediator asks participants to select solutions out of a range that they have identified.
Example:
-“Of these ideas you’ve listed here, which do you think you can agree to?”
-“Which ideas here would be fair?”
-“Which of these ideas would satisfy both of you?”

Any procedural description of the brainstorming process.

-"We'll list all the possibilities, then we'll go back over the list and you'll evaluate the ones that would work for you."

-“You can say anything out there at this time, and we’ll write it up.”

Any question in which the mediators asks participants about what they want to do within the mediation process:

Examples:

-“So, where do you want to go from here?”

-“How do you want to have this conversation?”

Participant: “Well, can we make sure this does not leave this room.”

Mediator: “What do you want to do about confidentiality?” (Only coded in this case because participant brought it up; had the participant not brought it up, it would be *Suggestion Question*)

Mediator Solution M/S

Any statement in which the mediator promotes a solution that did not come from the participants.

Examples:

- “Joint custody really is the best for the children.”
- “I think you should…”
- “This idea really meets both of your needs…”
- “Other people in this same situation have found the following strategy helpful…”

An assumption that the agreement will be written, if participants don’t raise it, is a Mediator Solution.

Example:

-“Generally, when we get to the end of the mediation session, we write up the agreement for the participants.”

-“Now that we’ve settled these issues, I’ll write this up for you.”

Note: A sentence or two of explaining why the solution would be good for participants would be coded as part of the Mediator Solution (e.g. “I think you should split the difference here. It really meets the goals of fairness that you both said you wanted.”). Similarly, a sentence or two of personal anecdote or research would be coded as part of the solution. However, if the mediator offers a solution and then goes on for more than a sentence or two, to tell an anecdote or cite research, then the additional commentary is coded as *Mediator Opinion*. (e.g. “I think you should let go of the past and start talking to each other again (*Mediator Solution*). When my grandmother died suddenly, my aunts realized they had never had a chance to tell her how much they loved and that they forgave her. They regret it to this day (*Mediator Opinion*).”

Note: If a mediator is advocating for an idea which came from one of the participants, it should be coded as *Advocate/Support* not *Mediator Solution*.

Note: If a mediator uses a question to offer an idea, such as “have you considered…?” then it would be coded as *Suggestion Question* not *Mediator Solution*.

Note: This should be coded each time the mediator uses this strategy, even if they already introduced the idea before.

Note: *Mediator Solution* takes precedence over *Mediator Opinion*.

Request Reaction

Any question in which a mediator asks participants for their thoughts on a specific suggestion of a solution to the conflict.
Example:

-“What do you think about that idea?”

-“Would this satisfy your needs?”

-“Would this idea be fair?”

-“If she agrees to clean up after herself, would that take care of what you’re looking for in terms of the house?”

-“Cindy, you suggested this idea about Clean up the Park Days. (*Summarize Possible Solutions*) Steve, what do you think about that? (*Request Reaction*)”

Any comment after a mediator has summarized a set of items participants have agreed to and asks participants if that will take care of the situation.

-"So, you've agreed to xyz. Will that take care of that issue?"

-“If you go with that solution, will you still feel afraid?”

-“What are your thoughts about this plan you are making?”

Any reflection of participant’s assessment with a questioning tone or a question attached to it, if the goal is to confirm that status of the possibility.
Examples:

-“So you guys don’t think this idea is realistic?”

-“So, you want to keep this possibility on the table?”

-“This idea works for you?”

Any comment in which a mediator asks participants to consider a list of possibilities and identify which ideas they want to remove from the lists.
Examples:

-“Considering this list of possibilities, which ideas won’t work, that you wish to cross off this list?”

Note: The question must be asking about a solution to the conflict to be coded as *Request Reaction*. If the mediator asks for a reaction to some general info about the situation (e.g. “Tanika, it sounds like you were really hurt by what happened. Barry, what do you think about that?”), it should be coded as *Reflection and Perception Question*.

Note: *Suggestion Questions* have an element of checking what a participant thinks, as they are a question (i.e., “How about swapping nights?”). Don’t code it as *Request Reaction* until there is a distinct and separate “How would that work for you?” question.

Summarize Possible Solutions SpS

Any statement in which a mediator verbally summarizes the solutions the participants have suggested.

- "So it sounds like you're saying you could share the housework."
-"What I'm hearing you say is that you think if you took that job as a dancer, that would solve your financial problems."

Any statement in which the mediator summarizes all of the ideas the participants have considered or are considering.

-“At this point it seems that you’ve indicated the options are to develop a payment plan, accept sweat equity as the payment, or split the difference and do the payment here today.”

Any statement by the mediator which summarizes agreements participants have made:

-“To summarize, you’ve agreed to wash the llama once a week, share the profit from the sweaters, and celebrate the llama’s birthday with a neighborhood party.”

Any action by the mediator involving listing the possible solutions.

Example:

-Mediator writing participants ideas on flip chart paper.

Note: If participants are talking back and forth and mediator is writing the ideas that are coming up, this should only be coded every 30 seconds, and not considered a break in a speaking turn.

The act of handing participants a written agreement.

Clarifying Point about distinction between Reflection, Interest Value, and Summarize Possible Solution:
A reflection of a statement of a value or concept without a person is ***Reflection or Interest/Value*** (depending on if the speaker used the value or a position to state it).

Example:

-“I’m hearing you say you want a clean house.”
-“I ‘m hearing you say you want privacy.”
-“I’m hearing you say you’re looking for respect.”
-“It sounds like you are looking for proof that others have confidence in you.”
-“It sounds like you want more gratitude in the relationship.”

-“It sounds like you are looking for reassurance that the neighborhood is safe.”

A reflection of a want/need + an experiential verb (feel, hear, to be, to see, to know) with no specifics or specific person taking on a change is ***Reflection*** or ***Interest/Value***.
Example:

-“It sounds like you want to make sure the kids are healthy.”
-“It sounds like you want to be free.”
-“It sounds like you want to know peace in your heart.”
-“Responsibility is something you want for your children.”
-“You want freedom for your children.”
-“It sounds like you want to feel loved.”

A reflection of a need/want + a value or concept attached to a person (who would have to be a certain way or do something) is *Summarize Possible Solutions*.
Example:

-“I’m hearing you say you want John to clean the house.”
-“I’m hearing you say you want honesty from Lorig”
-“I’m hearing you say you think you should clean the house more often.”
-“I’m hearing you say you want respect from Matt.”

A reflection of a want/need + active verb (one you can see someone doing) or an inactive verb plus a specific or specific person, is *Summarize Possible Solutions*.
Examples:

-“It sounds like you want to cook tofu every day.”
-“It sounds like you want to see the play next week.”
-“It sounds like you need to have the meeting earlier in the day.”
-“It sounds like you want to know that the children are eating tofu at Toby’s house.”
-“It sounds like you want Gretchen to bring the children home safely.”
-“It sounds like you want to hear ‘thank you’ at least once a day.”
-“It sounds like you want the kids home by 8pm.”
-“It sounds like you want the kids with you for Christmas.”

When a mediator reflects what a participant does not want, it is only coded as *Summarize Possible Solution* if there is an element of stopping an action that has been going on (e.g. with language like *stop, anymore, no longer*) or a specific future time period about which the concept is being discussed.
For example:

-“You don’t want her wearing skimpy dresses” is *Reflection*.
-“You want her to stop wearing skimpy dresses” is *Summarize Possible Solutions*.
-“You don’t want her wearing a skimpy dress to the prom” is *Summarize Possible Solutions*.
-“You don’t want to pay for her things,” is *Reflection*.
-“You don’t want to pay for her things anymore,” is *Summarize Possible Solutions*.

Joint Session/Caucus Session JS/CS

When participants representing all “sides” are in the room and the mediators are engaging with the participants about the mediation and the conflict, the state code should be set as Joint Session. If a

mediator is engaging with only one “side” or one participant about the conflict, then the state code should be set as Private Session.

If a mediator announces a caucus/private session, the Private Session should be coded when the leaving participant closes the door, thus making the conversation private. The session should be coded as Joint Session once the door opens again.

If a participant walks out and the mediator continues to speak with the other participant about the conflict, it should be coded as Private Session, as soon as it’s clear that the mediator will be engaging about the conflict. If the mediator tells the participant that they will wait to see if the other participant returns, then it is still considered to be in Joint Session.

If a participant arrives early and the mediator begins to speak with this participant about the conflict, the state should be set at Private Session. If the Mediator only tells the participant that they will wait until everyone arrives, or gives some other logistical information, then it should not be coded at all, because the mediation is not considered to have started.

Note About Process Directions: Process directions are generally not coded, unless they are accompanied by another behavior listed above. Process directions include such things as “The mediators keep the content of the conversation confidential”; “First we’ll ask you to speak about what brought you here, then we’ll identify topics to be resolved, then you’ll have a chance to work on finding solutions to those topics”; and “Generally about halfway through the process, we take a break.”
At the end of a private session, when a mediator asks, “What can I tell him from this caucus? What can’t I tell him?”, this is considered a process question and is not coded.

Participant Codes

General Directions

A **unit of speech** is defined as everything said by one person before someone else speaks with a substantive comment (e.g. not "ok" or "uh-huh"). If a person speaks for more than 1 minute, each 1 minute counts as a new unit of speech. The code itself starts the 1 minute unit for that code. Each code does not get coded in the same 1 minute or in the same unit of speech, whichever is shorter. If the same individual is speaking 1 minute after the code was last noted and performs the same behavior, then the behavior should be coded again. Each unit can have more than one code.

Note: Codes are transferable to people who are clearly on a participant's "side".
For example, in a neighbor dispute, if a participant talks about how fantastic their child is, it would be coded as *nothing*. In a custody dispute, if one participant points out things that the other participant's new spouse is doing that are problematic, it would be coded as *Wrong*. To be considered "on the side of", there must be a definitive relationship with one participant and not the other, or one participant must be formally identified as a representative of the person in question.

However, if the person about whom they are speaking is connected to both of them (for example a child in a custody dispute, or a boss in a co-worker dispute) then the codes would not be transferable, with the exception of PS. When a parent talks about what s/he thinks the child needs, it would be coded as PS, even though the child is connected to both.

Participant codes are done through keystroke. The abbreviation after each code is used in Noldus to indicate its occurrence. All codes are point codes, with the distinction of One Talk/Two Talk, which is a state code (i.e., the state should always be set to One Talk or Two Talk, and all point codes should occur during the One Talk state).

Interrupt (i)

Use any time a participants starts speaking while another participant is speaking. This should be coded even if not perceived as hostile. If there are a series of interruptions, *Interrupt* should still only be coded once for each participant in a 1 minute period.

Wrong (w)

Any statement in which a participant indicates that other participant is wrong about a specific issue.
Example:

-"It's not worth even half of what he's asking for."
-"You haven't read the research like I have. TV is not good for kids. Period."

Any statement in which a participant points out something that they consider to be negative that the other participant did in the past or in the mediation (must be concrete or tangible).This includes

statements where one participant is blaming the other participant, or attacking the other participant's behavior.
Example:

-"She left a mess in the dining room the other day."
-"She showed up at my house with a baseball bat."
-"It's not fair to block the entire street up with your four cars.
-"They put coleslaw all over my windshield."
-"That's none of your business." (Said to other participant.)
-"You used my good towel on the kitchen floor."
-"I feel like you're being passive aggressive right now."

Note: A statement should be coded as *Wrong* if the participant considers the behavior negative, even if the coder or others do not consider it to be negative (e.g. "He feeds the children meat" would be coded as *Wrong* if the speaker thought that was a negative thing to do.)

Any statement in which a participant indicates that other participant is lying about a specific thing.(usually in response to a wrong) Examples:

-"We can't get anywhere here without the truth."
-"That's just not true, and I can't believe you would lie about it."
-"That's bullshit…"

Any statement in which a participant indicates that they do not trust the other participant. (usually around solutions)
Example:

-"He says that now, but he won't do that."
-"I don't trust you."
-"I doubt you'll actually do that."
-"I'm not sure about your motives on (specific solution)"

A statement "It's + a qualifier" with no ownership.
Examples:

-"It's been hard."
-"It's stressful."
-"It's sad."
-"It's disgusting."

Note: These statements with ownership ("It's sad to me"; "It's stressful to me.") would be *Need/Want/Feel*.

Any statement in which a participant indicates that they don't care about the other person's needs. These "blow-off" comments may sometimes be mumbled

-"Yeah, sure…"
-"Who cares?"
-"Whatever…"
-"Yeah, right…"
-"Really?"(Always a wrong)
-"Here we go again…"
-"Are you kidding me?"

Note: If a statement indicates what both participants have been doing that is problematic (e.g. "We've both been yelling and screaming at each other") it would be coded as *Wrong* and *Responsibility/Apology (rw)*.

Any response to what the other participant says that is essentially "nuh-uh" or "no I didn't" or "that's not true" or points out a flaw in their argument. This includes any statements in which a participant is defending themselves against blame.

-P1:"You put the dishes in the dishwasher wrong." (Wrong)
-P2: "I did it exactly like you said to do it." (Wrong) or
-P2: "You didn't tell me how to do it!" (wrong)

-P1: "You don't play with the kids like my mother played with us." (Wrong)
-P2: "Your mother is not a good example to compare me to." (Wrong) or
-P2: "I do too! You're the one who never plays with them (wrong)

When one P corrects the other P about what their needs are, *Wrong* takes precedence over *NWF*, such as:

-P1: "I can't come out there."
-P2: "It's not that you can't, it's that you won't." (wrong)
-P1: "No, I can't afford it." (wrong even though it is a NWF by itself)

Put Down (p)

Any statement in which a participant makes a generalization about the other participant's behavior and criticizes it. This applies to behavior either in the mediation or in the past. Adverbs of frequency (such as always, never, every time, constantly, everywhere, anyplace, any time, whenever, everything) or a negative adjective (lazy, crazy, ugly) should be coded as *Put Down*.
Example:

-"I can't believe you would show up here late, just like you always do."
-"She's just lazy."
-"Every time I turn around he's complaining about something else."
-"Are you crazy?"
-"Are you out of your mind?"
-"You're crazy as a loon."
-"You never bother to get off the couch."

Note: The phrase "You never told me" is the one exception to *never* being a Put Down, as it's often used in the sense of "You didn't ever tell me" rather than the generalization of "You never do . . ."

Use of negative adjectives to make generalizations about the other participant's skills, property, etc.
Example:

-"Your cooking is disgusting."
-"Your car is foul."
-"Your clothes are nasty."
-"The woman has a fetish."

Any statement in which the participant makes an ironic/sarcastic comment about the other person. This is not defined by the tone used, but when the statement means the opposite of what was said. Note:

The statement should clearly mean it's opposite, as the code is not trying to capture an edge in a participant's voice which might be more subtle.

-"Yeah, like you could…"
-"And you're mother of the year."
-"And you never do that."
-"Oh gee, thanks, honey."

Any statement in which a participant calls the other participant a name or uses a derogatory term to describe the participant.
Example:

-"She's a whore."
-"He's an ugly slob"
-"And that's why he's dating 'Barbie Bimbo'"
-"Such an idiot…"
-"Yeah, and she's your perfect little Princess"

Note: Participants using derogatory terms about people not present in the mediation should be coded as *Put Down* only if it is in reference to someone one the other participant's "side".

Note: *Put Down* takes precedence over *Wrong and Question.*

Participant Solution (ps)

Any statement in which a participant makes a specific future-focused suggestion about what could solve the problem(including within the mediation).This does not include topics for discussion, but includes anything the participant needs, wants, expects, etc. These are most often in present or future tense, and can include hypothetical solutions. They may contain an if-then clause.

Example:

-"I think we should split the difference and I'll pay you $500."
-"You should take out the trash every other day."
-"I could pick the kids up if you're late from work."
-"It's his dry cleaning. He should pick it up."
-"She could tell her boyfriends not to make so much damn noise."
-"He could call me when he wants me to turn the music down."
-"Don't be blocking my car in."
-"The curfew should be 10pm."
-"We could take turns cleaning the bathroom."
-"Why don't you go get a real job?"
-"Why don't you stand on the Brooklyn Bridge naked."

Participant Solution takes precedence over *Need/Want/Feel*

Note: A Participant Solution can involve a negative concept if it is specific, for example, "No more Twinkies for breakfast."

Note: A participant solution w an “instead of” clause is only a solution, and not also a wrong. For example: “You should mop the floor instead of just sweeping it like you did last time” is only a PS and not also a wrong

Note: Similarly, when a participant offers a solution and then provides a sentence about why they like their idea (e.g. “Let’s take Aline to Mexico for the summer break. She needs to practice her Spanish”), it only counts as *Participant Solution*. If the participant goes on with more than one sentence (e.g. “Let’s take Aline to Mexico for the summer break. She needs to practice her Spanish. And I heard you told her to only speak English at home – really, I think that’s a big mistake.”)then the additional commentary may be coded if it is a code-able behavior (in this case *Wrong*).

Any comment in which a participant adds to a suggestion already made.
Example:

--Participant 1: "We should alternate weeks cleaning the bathroom." (PS)
Participant 2:"Fine, but only if you use bleach instead of lemon juice when it's your turn." (PS)
P1: “Yeah, fine.” (*Accept solution*)

Note: Suggestions about what people not participating in the mediation could do are coded as *Participant Solution*, if the person is associated with one of the participants (e.g. “my son could fix her fence” or “your husband needs to move his car”). If they involve someone not associated with either (e.g. “the city should pick up the trash twice a week”), then they are note coded as anything.

Note: If a mediator makes a suggestion and a participant indicates that it's something they could do, it should not be coded as *Participant Solution*. If a mediator makes a suggestion and a participant adds to the suggestion, then it should be coded as *Participant Solution.*
Example:

--Mediator: "What about poisoning the cats?"
Participant: "Yeah, I guess we could do that." (*accept solution*)
--Mediator: "What about poisoning the cats?"
Participant: "Well, I'd only do that if he pays for the poison." (coded as *PS)*

NOTE: Hypothetical questions or solutions are treated as present tense, and responses are coded the same as if it was a solution on the table. For instance, a mediator asks “What would happen if you agreed to take the kids out of daycare?”

P: It would make me exhausted (NWF)
P: We would have to pick up groceries (PS)
P: That would be great (AS)
P: I’m not doing that (RS)

Any behavior direction from one participant to another, unless it comes in the form of a question
Example:

-“Let me talk now.”
-“Stop interrupting me.”
Note: “Will you stop interrupting me and let me talk?” is still coded as a question.

Note: *Participant Solution* takes precedence over *Responsibility/Apology*. If a comment has an active verb or includes specifics, then it is *Participant Solution*. For example: "I need to spend more time with the children," or “I should make sure the children eat more tofu,” would be coded as *Participant*

Solution. If a comment is about the past, such as, "She's right, I really should have spent more time with the children," then it is coded as *Responsibility/Apology*.

Example:
I should have taken the trash out on time (R/A)
You should have taken the trash out on time (Wrong)
We should have taken the trash out on time (RW)
From now on, I'll take the trash out on time (PS)

Topics, though they follow the grammatical structure of solutions, are not codeable, as they are only introducing the fact that a solution is necessary, not what the solution may be:

-I want to talk about custody (nothing)
-I want to discuss the schedule (nothing)
-I want to come to an agreement (nothing)

Care/Appreciation/Understand (ca)

Any statement in which a participant expresses interest, concern, understanding, or empathy in the other participant's needs or feelings.

Examples:

-"I mean, I don't want to make you angry or anything."
-"I really care about you."
-"You are the father and it's important to me what you think."
-"I'm only saying these things because I love you and I think you deserve to hear the truth."
-"I understand that this has also been hard for you."
-"I understand that you want to be with your parents as much as you can."

Any statement in which a participant expresses appreciation of other participant's behavior or characteristics or ideas.

-"I really want to work this out because I think in general you're a good neighbor."(ps, ca)
-"You've always been a good worker."
-"I appreciate that you did that for my son."
-"I see your point/I understand your point"

Any statement through which a participant demonstrates acceptance of an apology, in response to an apology.

-"Thanks for the apology."
-"Don't worry about it, it's in the past."

Any statement about a participant wanting good or improved things *exclusively* for the other participant, or wanting it at their own expense:

-"I want her to feel loved"
-"I want to see her making progress"

Note: If the comment is about what the speaker wants for both of them ("I want us to get along again," "I want us to be friends") it's just a PS.

Note: If a participant is saying something positive about the other participant in the past as a way to criticize them now (e.g. "He used to be such a good student, and now he gets D's.") it would still coded as *I Care/Appreciation and then whatever follows (in this case, Wrong)*.

Any positive or better than neutral comment about the other person or their relationship:

-“We got along fine.” (c/a)
-“We’re getting along now.” (c/a)
-“We were friends before he turned into such a dick.” (CA and PD)
-“We worked together for 20 years.” (NOTHING)
-“We worked together for 20 years and had a decent relationship.” (CA)

Question (q)

Any question in which a participant solicits information from the other participant, with or without edge in their voice.
Examples:

-"What do you mean he's hard of hearing?"
-"What do you mean when you say you think I'm a sexist pig?"
-“Why does that bother you?”
-“What do you want me to do?”
-“Why are you in this?
-“What would work for you?”
-“What are you talking about?”

Note: “What?” is always coded as *Question*, even it if has a tone to it. “Really?” is always coded as a wrong, regardless of the tone.

Note: Depending on the question, it may be combined with another code. For example, "Why does that bother you, you nosy bitch?" would be coded as *Question* and as *Putdown*.

Note: *Participant Solution* takes precedence over *Question* which offer a solution (such “Why don’t you just go get a job?” or “Why don’t you pick up the kids on Tuesdays?”) are *Participant Solution,* rather than *Question*.

If the question is offering a solution to outside the room/to the conflict (Will you do the dishes every Thursday?) it’s a solution, if it’s offering a solution to inside the room, it’s a question (Will you stop interrupting me?) and if it’s introducing a topic (Can we talk about x now?) it’s a question

Note: *Wrong* and *Put-Down* take precedence over *Question*. For example, “Really?” would be coded as Wrong, and “Are you insane?” would be coded as *Put Down*.

Note: Questions directed to the Mediator (“what do you think we should do?”) would not be coded.

Question takes precedence over *Reject Solution*.
Wrong and PD take precedence over Q
PS takes precedence over Q

If P reflects what the other P says, it's just a Question, even if there is obvious tone to it:
Examples:

P1: You shouldn't use my kitchen towel to mop the kitchen floor (PS)
P2: Your good towel? (Question)

P1: You can set the table before dinner (PS)
P2: You seriously expect me to set the table? (Q)

P1: I don't want you hovering over me. I want to be autonomous. (PS)
P2: Let me get this straight. Somewhere between hovering micro-management and no contact at all, that's what you're looking for? (Q)

Need/Want/Feel (n)

Any statement in which a participant expresses his interests/feelings/emotions. Any statement which describes how what is occurring affects the speaker or someone they are speaking for (with the exception of jointly owned children)

-"I need to get sleep at night and *the music keeps me up*." (PS and NWF)
-"My husband was heartbroken." (NWF)
-"I can't afford to miss another day of work."(NWF)
-"I keep my lawn neat and if she doesn't it will bring down my property value."(NWF)
-"I can't afford to pay for this lifestyle anymore."(NWF)
-"My fear is that he'll stay the same."
-"I'm worried that she won't cook good food."
-"All of this stress caused my health to go down the tubes."
-"I don't have any problem with that."
-"What seemed fair then doesn't seem fair to me now."

Any statement in which a participant expresses how s/he felt. "I feel…" or "I felt…"followed by any emotion word.

-"I felt singled out."
-"I don't feel comfortable with…"

Note: Just using the term "feel" does not make it NWF. "I feel that…" and "I feel like…" is not necessarily *Need/Want/Feel*. For example "I feel like you are being a jerk," is *Put-down*.

A statement of "It's + qualifier + ownership" is a Need/Want/Feel . Without ownership, it would be coded as *Wrong*. Ownership can be through a "for me" qualifier or through describing one's own actions:

Examples:

-"It's been hard for me."
-"It's stressful for me."
-"It's sad to me."
-"It's disgusting to me." (i.e., "It's disgusting" without the "for me" is W)
-"I find that disgusting."
-"It creeps me out."
-"It's hard to give you feedback when you're the president's daughter." (nwf)

-"It's difficult to put these feelings into words." (nwf)
-"It's difficult for me to put these feelings into words." (nwf)
(Because the action being described is the speaker's action, the "for me" is implied. If they are discussing someone else's actions, it would still be a wrong, such as "It's stressful when you don't take out the trash on time.")

Any statement in which a participant expresses to the mediator that they do not want to talk about a certain topic because of their privacy. Expressed to the other participant is Wrong.
-"I don't think that's any of your business."
-"I don't feel comfortable talking about that here."

Note: *Wrong* takes precedence over *NWF only* when one P corrects the other P with what their needs around the topic, such as:
-P1: "I can't come out there."
-P2: "It's not that you can't, it's that you won't." (wrong)
-P1: "No, I can't afford it." (Wrong even though it is a NWF by itself)

Note: "I don't think I should have to xyz" is not NWF because it does not describe how the situation affects the speaker. It would be coded as Reject Solution.

Note: confirming a mediator's reflection of emotion is not a new NWF
-P1: "My wife died and then Snuggy, my cat, got sick . . ."
-M1: "It sounds like it's been a stressful time for you."
-P1: "Yes! *Really* stressful" (not a NWF, because only confirming med's statement)
-P1: "Yes! *Really* stressful. And I just feel so alone now." (Second part is a new NWF)

Negative statements, such as "I don't know," "I don't understand," "I don't care," etc, or statements of how the speaker is *not* affected by the conflict:
-"I don't know what else we can do."
-"I don't know anything about client reports."
-P1: "You used my good sponge on the floor (wrong)
-P1: "I didn't know!" (NWF)
-"I really don't care what you think of me."
-"I don't have a problem with . . ."
Note: Exceptions would be Put Downs ("I don't know why you're being such an ass.") and statements where the speaker is clearly expressing hopelessness about the conflict itself ("I don't know if there's any way to solve this." H)

When a P expresses a previous agreement that is not being honored but doesn't specify that the other person is WR, it's only NWF:
"We agreed on 50/50, and I'm doing more than 50%." (NWF)
"I'm doing more than 50%." (NWF)
"We agreed on 50/50 split, and Pete is not doing his half." (W)
"We agreed to split duties equally, and Pete is not doing his half. I'm doing way more." (W& NWF)

Responsibility/Apology (ra)

Any question or statement in which a participant takes responsibility for some role in the conflict, including taking responsibility for actions within the mediation
Examples:

-"I know I haven't been perfect here, either."
-"I should have . . ."
-P1: "You're being a dick." P2: "You're right, I'll stop being a dick."
-"I'm sorry I interrupted you; go ahead."
-"My temper got the best of me. I know I shouldn't go around threatening to beat people up."
-"I realized denying him access to his kids wasn't fair."

Note: *Participant Solution* takes precedence over *Responsibility/Apology*. If it is about the future and active, then it is *Participant Solution*. For example: "I need to spend more time with the children," or "I should make sure the children eat more tofu," or "I really do need to be a better father," would be coded as *Participant Solution*. If a comment is about the past or reactionary, such as, "She's right, I really should have spent more time with the children," then it is coded as *Responsibility/Apology*.

Any statement in which a participant apologizes for a specific behavior or action, including within the mediation.

-"I'm sorry for (specific behavior)."
-"Oh, did I interrupt you? I'm sorry, go ahead. (Q + RA + PS)

Any apology for a participant's behavior is coded as *Responsibility/Apology*, even if followed by reasoning or excuses, as long as that apology is clearly taking responsibility. Examples:

-"I'm sorry I yelled at you, but I'd had a really bad day." (RA + NWF)
-"I'm sorry but you barged in on me." (wrong only, because not clearly taking responsibility)
-"I'm sorry I yelled at you, but you barged in on me and you know how angry I get." (RA + wrong)
-"I'm sorry, but you just can't barge in on me when you know I've had a bad day." (PS only)
-"I'm sorry but I can't afford to do that." (NWF only)
-"I'm so sorry I can't come visit you. I really want to, but I just can't afford it." (RA + NWF)

Note: "I'm sorry you feel that way" should not be coded as *Responsibility/Apology*.

Note: "I'm sorry" when used as a term of speech, rather than in reference to the speaker's behavior, is not coded. For example, "I'm sorry, but you just can't walk your dog without a leash in this neighborhood."(Only PS)

Note: RA is coded not when a Participant admits to a wrong, but when they agree that the wrong was, in fact, the wrong thing to do. Examples:

-P1:"You were late seven times last month." (wrong)
-P2: "I was not! I was late twice!" (wrong)
-P2: "Well, I was only late twice, but you're right, I shouldn't have been late at all." (wrong + RA)

Wrong and Responsibility Combined (rw)

To save time when coding, a new code has been added for the combo of wrong and responsibility/apology, with a keystroke of rw.

Examples:

-“We’ve been fighting all the time”(rw)
-“We let our tempers get the best of us.” (rw)
-“We should have been more thoughtful toward one another.” (rw)

Accept Solutions (as)

Code when participants formally accept a solution. This should be coded for all participants who are explicitly agreeing (and/or willing to try it in some capacity). If both participants are accepting the solution, then Accept Solution should be coded for each of them. Examples:

-“The thing about him coming to the soccer games is fine. We can do that.” (AS)
-Participant 1: “How about if I replace the llama?” (PS)
Participant 2: “Would you really? Oh, yes, that would take care of this.” (AS)
-“I’ll try to get it done.” (AS)
-“I’ll do my best to replace the llama.” (AS)
-“I’ll try.” (AS)

Note: “I’ll try” or “I tried” statements are not automatically AS, only when in reaction to a specific solution.

-P1: “How about answering the phone every time I call?” (PS)
-P2: “I’ll try. We can see how it goes.” (AS)
-P2: “I tried that already. You yelled at me.” (nothing for first half (not explicit reject) + wrong)

Code when participants are selecting among several ideas that have been brainstormed and discussed, even if the participants selecting it is the one who suggested it. Examples:

-Mediator: “Looking over these ideas, which do you think you could agree to?”
Participant 1: “I think the one about trading off weekends could work.” (*Accept Solution*)
Participant 2: “Yup, we could make that work.” (*Accept Solution*)

This should not be coded if participants have agreed in concept but are still working out the details. Example:

Participant 1: “What if we take turns driving the kids to kazoo lesson?” (Participant Solution)
Participant 2: “Well, that could only work if I don’t have to drive on Mondays, because I get my massage Monday evenings.” (*Participant Solution*)
Participant 1: “Okay, I’ll drive Mondays and you do Tuesday lessons.” (*Accept Solution*)
Participant 2: “Perfect. Let’s do that.” (*Accept Solution*)

Note: As with all solution codes, when a participant accepts a solution and then provides a sentence about why they will accept it (e.g. “Yes, let’s take Aline to Mexico for the summer break. She needs to practice her Spanish”), it only counts as *Accept Solution*. If the participant goes on with more than one sentence then the additional commentary may be coded if it is a code-able behavior.

Note: "Oh, that's a good idea," “I like that idea,” would be coded as *Accept Solution* when it’s said to either the other P. Said to the mediator, it’s NWF

Note: If there’s a solution that would happen within the mediation, and the P agrees to it, it’s AS:

P1: “Stop calling me names.” (PS)

P2: "Fine. I'll stop." (AS)

Note: Agreeing to discuss a topic or brainstorm a topic is not Accept Solution (nothing)

M: I heard a lot about cooking and meals. Is that a topic you'd like to make a plan about today?
P1: Yes (nothing)
P2: Yes, we need to, because it's driving me crazy (NWF)

Note: Agreeing or accepting the behavioral guidelines set out by the mediator is not AS (nothing). Agreeing to a solution put forth by the mediator is AS
Example:

-M: "So the ground rules are that both of you speak kindly to the other, and speak one at a time. Can you agree to that?"
-P: "Yeah, sure." (nothing)

-M: "You've had your turn to speak, Lonnie. Please let Ruth speak now."
-P: "Fair enough." (nothing).

-M: "Have you thought about creating a flexible schedule?"
-P: "That's a great idea." (NWF)
-P: "Oh, let's do that." (AS)

-M: "I think you should do joint custody."
-P: "Yes, that's what I want." (AS)

Reject Solution (rs)

Any statement in which a participant explicitly rejects a solution that it posed to them, by the other participant or the mediator, **in the previous speaking turn.**
Example:

-P1: "How about if I give you your old job back with back pay?" (*PS*)
P2: "Nope" (coded as *RS*)

-P 1: "How about if I give you your old job back with back pay?" (*PS*)
P2: "No way (RS). You need to pay for the humiliation you put me through." (*PS*)

-P1: "How about I give you your old job back with back pay?" (*Participant Solution*)
P2: "No. (RS) I want you to stand on the Brooklyn Bridge naked with an apology painted on your butt." (PS)

P1: I want to see the kids on Tuesday (PS)
M: So- you want to have the kids on Tuesday?
P1: yes (AS)
M: Tuesday at 8p?
P1: yes (AS); and also Friday before noon (PS)
M: Friday at 11?
P1: I don't want them at 11 (RS); I want them at 1130 (PS)
M: Friday at 1135?
P1: I can't do 1135 (RS); but I can do 1140 (PS)

M (to P2): So, he wants to pick them up at 1140.
P2: No. That doesn't work for me (RS).
M: How about 1130?
P2: I only want 1135. (PS)

Note: Reject Solution should only be coded when responding directly to the suggestion, not a comment made several minutes later which may reference a suggestion made in the past.
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Note: RS or AS will only come in direct response to a PS proposed by the M or P. If the response comes more than one speaking turn later, it is coded as a new solution. This includes pre-emptive rejections

P1: I just want to say up front that I'm not paying her. I don't owe her any money. (PS)
-P1: Do you want to pick up the kids on Tuesdays?"
-P2: No. I don't get off work in time (RS) or
-P1: Do you want to pick up the kids on Tuesdays?"
Conversation circles around for a few minutes
-P2: I can't pick up the kids on Tuesdays because I don't get off work in time (PS)

Any statement in which a participant indicates that a solution the other participant suggested will not work, or that they are not willing to accept it.
Example:
-"That won't work."
-"We can't do that."
-"I can't have you living with me."

If P offers a solution and the other responds with how that proposed solution would affect them, or the consequences of the proposed solution, it is NWF rather than Reject, until there is an explicit rejection.
-"Just the thought of that exhausts me. I'm already overstretched." (NWF)
-"But I'm not always home." (NWF)
-"I don't like that idea." (NWF)
-"No. I can't do that. I'm already overstretched." (RS + NWF)

Putdown takes precedence over Reject. Example:
-"That's a dumb idea" (PD)
-"No. (RS) That's a terrible idea." (Wrong)
-"You're an idiot." (PD)

Note: As with all solution codes, when a participant rejects a solution and then provides a sentence about why they won't accept it (e.g. "No, we're not taking Aline to Mexico for the summer break. It's terribly dangerous down there!"), it only counts as *Reject Solution*. If the participant goes on with more than one sentence (e.g. "No, we're not taking Aline to Mexico for the summer break. It's terribly dangerous down there! But she does need to practice her Spanish and I heard you told her to only speak English at home – really, I think that's a big mistake.") then the additional commentary may be coded if it is a code-able behavior (in this case *Wrong*).

Silence SI

(always code as P1)

Any instance in which <u>everyone</u> (all participants and mediators) is silent for more than 10 seconds

Note: If a participant is silent for less than 10 seconds, and then another person speaks, the moment should not be coded as *Silence*.

Note: If a question is asked to both and no one speaks, only code *Silence* for P1.

Hopeless HO

Any statement in which a participant expresses a sense that nothing can change or get better in the situation being mediated.
Examples:

- "I can't see what we can do differently. Nothing seems to work."
- "This process isn't going to work."
- "I don't know why we are even wasting our time here."
- "I don't think there's any way to solve this."

Hopeless takes precedence over *Process Complaint* and *Need/Want/Feel*. Generally, "I don't know's" are NWF, unless they are expressing clear hopelessness that the conflict itself cannot be resolved. Hopeless comments tend to have more certainty than NWF "I don't know's," which are more like "I'm not sure."

Examples:

-"I've tried everything. I don't know what else to try." (NWF)

-"I've tried everything. It's not possible to fix. I don't know what to do now." (H)

-M: "What would let you get the respect you're looking for and still have the communication she's looking for?"

-P: "I don't' know." (NWF)

-P: "I don't know why you're even asking him that. There's nothing that can be done." (H)

Process Complaint

A statement in which a participant complains about the process or the mediator's behavior in it.
Example:

-"Do we really have to go through all this? Either she's going to pay me or she isn't."

-"I can't believe you're taking her side on this one. I knew we should not have come to mediation."

-"You're sitting closer to her than to me."

-"Are you going to let her get away with that?"

Note: *Hopeless* takes precedence over *Process Complaint*

One Talk / Two Talk (2t / 1t)

State variable. As long as one participant is speaking at a time, state should be in *One Talk*. If both participants are speaking over each other in a hostile way for at least 3 seconds, begin coding *Two Talk*.

Remain in *Two Talk* state until one participant or a mediator is speaking alone, or there is silence, for 5 seconds.

Note: No other participant codes are coded during *Two Talk*.

Appendix F: List of Research Team and Advisory Committee Members

The **Research Team** collecting and analyzing data used in this report is comprised of professional, full-time researchers with graduate-level education in the field. They are as follows:

Lorig Charkoudian, PhD
Principle Investigator

Haleigh LaChance, MA, MFA
Research Coordinator
Coded: Participants
Years on project: 4

Michal Bilick, MS
Research Associate
Coded: Mediators
Years on project: 2.5

Suzanne Rose, MA
Research Assistant
Coded: Participants
Years on project: 2

Gretchen Kainz, MA
Research Assistant
Coded: Participants
Years on project: 1.5

Emmett Ward, MA
Research Assistant
Coded: Mediators
Years on project: 1.5

Lindsay Barranco, JD
Research Assistant
Coded: Mediators
Years on project: 1

Kate Bogan, MA
Research Assistant
Coded: Participants
Years on project: 1

Brittany Kesteven
Data Assistant
Years on project: 3

Matthew Swiderski
Graduate Assistant
Years on project: 1

The **Advisory Committee** for this project has played a central role in the development of this research design, implementation in the courts, survey design, guidance on data collection, and analysis and interpretation of the data.

Members of the Advisory Committee, along with their affiliated agency, are listed below in alphabetical order. This list includes members of the broader research team, who are active participants on the Advisory Committee.

- Barbara Domer, Conference of Circuit Court Administrators
- Brian Polkinghorn, Bosserman Center for Conflict Resolution, Salisbury University
- Clifton Griffin, Graduate Studies and Research, Salisbury University
- Connie Kratovil-Lavelle, Esq., Family Administration
- Deborah Eisenberg, Esq., Center for Dispute Resolution, Francis Carey School of Law, University of Maryland

- Diane Pawlowicz, Administrative Office of the Courts, Court Operations, Research Sponsor
- Douglas Young, Institute for Governmental Science and Research, University of Maryland
- Haleigh LaChance, Salisbury University
- Heather Fogg, Mediation and Conflict Resolution Office (MACRO)
- Jamie Walter, PhD, District Court Clerk's Office
- Jeanne Bilanin, PhD, Institute for Governmental Science and Research, University of Maryland
- Jonathan Rosenthal, Esq., District Court ADR Office
- Joy Keller, Administrative Office of the Courts
- Julie Linkins, Esq., Administrative Office of the Courts
- Lou Gieszl, Administrative Office of the Courts
- Nick White, PhD, Mediation and Conflict Resolution Office (MACRO)
- Pamela Ortiz, Esq., Access to Justice Commission
- Rachel Wohl, Esq., Mediation and Conflict Resolution Office (MACRO)
- Robb Holt, Esq., Administrative Office of the Courts, Court Operations
- Roberta Warnken, Chief Clerk, District Court
- Roger Wolf, Esq., Francis Carey School of Law, University of Maryland
- Toby Guerin, Esq., Center for Dispute Resolution, Francis Carey School of Law, University of Maryland
- Wendy Riley, Conference of Circuit Court Administrators

During the final phase of this research, a new Judicial Committee Structure was adopted by the Maryland Judiciary. An ADR committee comprising judges from all levels of court, and staffed by the Mediation and Conflict Resolution Office has been instrumental in reviewing the report, and will take the lead in determining best ways to disseminate the results. They will provide leadership in making changes to policies and programs based on the various ADR reports conducted with the support of this grant from the State Justice Institute.