

Just My Style: The Practical, Ethical, and Empirical Dangers of the Lack of Consensus about Definitions of Mediation Styles

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Abstract

This article reviews the importance of research and understanding of mediation styles on quality assurance, ethical practice, and accuracy of research. Three studies are reviewed. One finds that while there are patterns of stylistic practice in mediation, there is no agreement on the definitions for different styles. The second finds that mediators tend to practice in either a directive or a reflective style within a given mediation, rather than using a mix of strategies. The final study highlights how different mediator strategies affect participant satisfaction with the process. Implications for practice and future research are discussed.

Questions about mediator style have significant implications for mediator ethics, quality assurance, and the ability of researchers to identify the outcomes of mediation. Yet little empirical research has been performed to understand mediator style and its implications for practice. This article outlines the dangers of ignoring mediator style, discusses research that points to confusion about the labels that are used, and provides direction for future research.

The research described in this article intentionally did not begin with an attempt to study certain styles. Instead, the goal was to understand if there were, in fact, patterns of behaviors or tactics that mediators tended to use together and then to see if these patterns could accurately be tied to any commonly used term to define them. In fact, throughout this article, I resist using the names of specific styles to describe the groups of mediator behaviors that were observed because to do so would imply that there are accepted definitions of styles. The primary thesis of this article is that there are not standard accepted definitions. The research described here supports this assertion and points to problems associated with the lack of standard definitions.

The research described in this article comes from three separate studies. The first was a survey of mediators practicing in a variety of settings throughout Maryland. The second involved observations of live mediations and coding the behaviors used by the

mediators, and the third reports the effectiveness of different mediation styles. This article begins with an overview of the reasons it is important to understand mediator style, continues with a summary of the three studies and their implications for research and practice, and concludes with responses to the editors' vexing questions about mediator style research.

The Importance of Understanding Mediator Style

The Ethical Obligation

Participant self-determination is considered a core ethic of mediation across all approaches, styles, and venues. Self-determination is the very first standard in the Model Standards of Conduct for Mediators developed and jointly adopted by the American Arbitration Association, American Bar Association, Association for Conflict Resolution (2005). The standard reads, "A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes."

The standard is clear that self-determination begins with the selection of the process and the mediator. If potential mediation participants do not understand what choices they have in terms of style and how one mediator may differ from another in terms of what they may actually do in the mediation session, then participants cannot exercise their self-determination. Even those who are mandated to a particular mediator or program should be able to understand in advance what process to expect. Ideally, a potential participant could review findings from empirical research to understand advantages and disadvantages of each style and consider which is best for their conflict. The same should be true for roster managers or agencies interested in establishing mediation programs. Unfortunately, potential participants cannot find research identifying advantages and disadvantages of each style. Even worse, they cannot even find a clear agreed-upon definition of each style. The research discussed later highlights the lack of agreement among mediators about the very definitions of the style they practice. This means that participants thinking they understand facilitative mediation and seeking it out may find two mediators, both claiming to be facilitative mediators who provide radically different processes. Riskin (1994) highlighted the danger of ambiguity in the definition of mediation on participant selection of mediators and on mediator quality assurance. Almost 20 years later, little progress has been made to create clarity. This presents a significant ethical challenge to the field. The first priority for researchers of mediation style must be to assist practitioners to understand and articulate what actually occurs within each style.

Quality Assurance

Courts, agency-based mediation programs, community mediation centers, and other roster-based programs struggle with efficient and effective methods to promote quality

among their practitioners. Professional mediation associations also strive to develop ways to support quality practice.

In this context, The Association for Conflict Resolution (2011) Model Standards of Conduct for Mediator Certification Programs highlights the importance of clarity about mediation style (the document uses the term framework). Standard 3, Section 3, *Disclosure of Frameworks/Settings/Areas of Practice*, states that a certification program needs to provide a clear statement of the style being assessed and provide assessors who are trained and experienced in that style. The standard also indicates that different instruments may be necessary to measure quality in different styles. This requires consensus on the philosophy and tactics or strategies appropriate within each style.

Quality assurance systems (including training programs, certification, observation of mediators, and mentoring) require that the agency implementing the quality assurance system can articulate what styles are acceptable and what strategies are considered legitimate within those styles. Without agreement about what interventions are considered appropriate within a specified mediation style, agency oversight is seriously compromised, and mediation participants cannot identify if they are receiving appropriate mediation services.

Consider the issue of reality testing. Many agencies, organizations, and rosters have indicated that facilitative mediation is the acceptable style. Most mediators who consider themselves facilitative would agree that they use reality-testing strategies in their mediations. However, they may actually be referencing very different tactics and situations. For example, one divorce mediator might use the term reality testing to describe what they do once participants have reached a tentative agreement, and they want to consider contingencies: “To review, you have agreed that the children will spend Monday through Thursday with Erricka, and Friday through Sunday with Tracee. You’ve agreed that for birthdays, you will both take the children out to dinner together. And for holidays, you are going to alternate major holidays. As you think about this agreement, is there anything in here that might not work in some situations? Are there any contingency plans you want to consider?”

Another divorce mediator might use the term reality testing to describe how he or she responds to ultimatums. Parent: “Take it or leave it, I want the kids Monday through Thursday. I’ll just go to court if you don’t want to negotiate in good faith here.” Mediator: “Now the truth is that everyone is worse off when you go to court, especially the kids. Are you sure you want to put your kids through all that?”

Another divorce mediator may use the term reality testing to indicate what he or she does when they see something they consider a flaw in a proposal by one parent. Parent: “I know what we can do. We’ll just have the kids alternate days – 4 days at your house, 3 days at my house, and so on...” Mediator: “Actually, research shows that kids this age really need more stability than that.”

An individual in the position of giving feedback, whether for certification, continuing education, a decision about a position on the roster, or in a mentoring relationship, would need to be clear about which of these very different strategies is acceptable, which is encouraged, which is discouraged, and which is forbidden. Otherwise, any attempt at feedback can be met with the explanation “this is just my style of mediation,” and the

conversation degenerates into a debate about the merits of different strategies. While debates about the merits of various strategies are appropriate in the context of professional conferences, they prevent an agency from effectively implementing objective certification or other standardized quality assurance mechanisms. This reality-testing example is but one among many mediator tactics where mediators using the same term implement the process in very different ways. This highlights the need for detailed definitions and distinctions among mediation styles.

Improving Outcome-based Research

Significant research has been conducted in an attempt to measure outcomes of the mediation process, especially in comparison with litigation. In most of these studies, mediation is considered a standard treatment variable with no recognition of the sometimes significant difference in the actual process mediation participants may be experiencing. In essence, the experimental design of these studies is flawed in that the treatment being measured is heterogeneous. As a result, the outcome-based research we have accepted as a field may be clouded by the lack of clear definitions and understanding about mediation styles.

For example, a researcher may be looking at the effect of custody mediation on settlement rates and on the long-term impact on the parents' relationships, comparing mediated cases to nonmediated cases. There may be some mediators using a caucus and settlement-based model that may result in higher settlement but does not improve the relationship. Others may be using a process that attends to the relationship and may have a lower settlement rate and significantly improves the relationship. If these are lumped together in an aggregate study, the impact of each may be masked, and it may appear that the mediation treatment does not have a significant effect on either dependent measure. Wissler (2006) points out that most studies do not sufficiently consider the fact that many of the components of the mediation process are interrelated and that multivariate analysis could allow researchers to tease out the effects of specific components and examine how some components interact. She goes on to criticize the black box approach, in which researchers do not examine the mediation process itself, but assume the process to be a standard variable. Wall, Dunne and Chan-Serafin (2011) also highlight the lack of research examining the effect of individual mediator strategies on outcomes.

A Personal Tale

When I needed mediation to develop a parenting plan, I had a long conversation with a program director about the type of mediation I wanted. I was clear that I wanted facilitative mediators who would assist my child's father and me through some difficult conversations as we made some major decisions about our child's future. The director assured me that the co-mediators he would assign were committed to a facilitative process and were some of the best mediators in the program. I was shocked, therefore, when the mediators gave advice about what we should and should not try to reach an understanding about; discussed their personal experiences with child rearing; made suggestions about what we should do; alternately agreed with one then the other of us; and pointed out flaws in the options we were considering. While I believe the mediators considered all of these

strategies to be part of the facilitative process, their behaviors left me feeling judged and criticized, did not help us reach agreement, and were not what I had gone in search of. One useful component of the experience was that it taught me how much work we have to do with regard to clarifying our definitions of mediation styles.

Research on Mediator Style

The three studies described later highlight the lack of consensus about the definitions of various mediator styles. The first study was originally conducted as a survey to be used for a Maryland quality assurance program. The outcomes were striking in finding the lack of agreement among mediators on mediation styles. The results were published in Charkoudian, de Ritis, Buck and Wilson (2009). The second and third studies were conducted as part of a larger study of effectiveness of mediation approaches, conducted by the Maryland Association of Community Mediation Centers (MACMC, now Community Mediation Maryland). The MACMC board recognized the lack of empirical research available to identify a connection between specific mediator strategies and outcomes of mediation. The board was also interested in understanding how certain common programmatic strategies in community mediation, such as matching the mediator to the participants' demographics, affected mediation outcomes. With a grant from the Hewlett Foundation, MACMC conducted extensive research on these issues, using behavior coding and pre- and postsurveys.

The results of Study 2 were published in Charkoudian et al. (2009) along with the survey results of Study 1. They are used here to identify mediator behaviors with high and low probabilities of occurring together and consider how these patterns relate to what mediators in Study 1 claimed to be doing. Study 3 was designed to explore the impact of matching gender and race of mediators to participants on participant satisfaction, but included variables of actual mediation strategies. We use the results here to explore the impact of contrasting strategic behaviors on participant satisfaction. These findings concur with Wissler (2006) challenge to researchers to consider what is inside the black box of the mediation treatment. The results appear in Charkoudian and Wayne (2010).

Study 1: Mediator Self-reported Strategies and Style

In 2003, the Maryland Mediation and Conflict Resolution Office developed a collaborative process to establish a statewide quality assurance program. For reasons described previously, this group decided it was necessary to establish definitions of mediation and the various styles of mediation used in Maryland. Because those involved in this process had experience with the confusion around the terms for the different styles (facilitative, evaluative, transformative), they decided to work backward to get to the definitions. The group started with a survey which identified 63 separate behaviors a mediator might use in a mediation and asked respondents to indicate if they use that behavior often, sometimes, occasionally, unlikely, or never. The list of behaviors was developed by a group of practitioners and trainers, including the author. The group developed the list based on their

many years of experience as mediators, participating in a variety of training, discussions at mediation conferences, and understanding of the mediation literature.

The survey was crafted with specific behaviors and examples of the behaviors to avoid confusion about broad terms, such as the confusion outlined previously in the example about reality testing. For example, instead of asking if a mediator addresses feelings, there were four separate questions about feelings: (a) open-ended questions or requests seeking feelings about the situation; (b) summarizing or paraphrasing feelings already mentioned by participants; (c) attempts to articulate participant's feelings from the participant's statement when the feelings have not been named by the participant him or herself; (d) mediator makes empathetic statement to one or both participants. Each possible mediator behavior was accompanied by several examples. Other examples of behaviors which mediators were asked to answer if they used often, sometimes, occasionally, unlikely, or never were as follows: Mediator gives his/her thoughts on the topic at hand (e.g. Children that age generally need...); mediator praises both participants' behavior in the mediation; mediator makes a proposal for what the solution should be; and mediator facilitates brainstorming.

Twelve additional questions presented a mediation scenario and asked which of a choice of responses the mediator would use. For example, one of the scenarios asked how the mediator would respond to a long shouting match by participants. The respondent was offered a list of possible responses (e.g. call for a caucus; interrupt and try to reframe; wait until it ends and then reflect back; call for a break) and could circle as many interventions from the list as they wished.

The final question of the survey was intentionally open ended and asked, "What approach to mediation do you use?" This allowed people to define their approach to mediation the way they might define it to the general public, a client, or a roster manager. Some people answered with the traditional titles such as facilitative or transformative. Some responded that they used a mix of various approaches. Several respondents defined their style as community. While community has generally been considered a venue rather than an approach, the relative frequency with which it appeared as an answer to this question led the authors to use it in the analysis for this study. Others answered with a lengthy description of their mediation philosophy. Half of the answers fell into the categories of community, directive, mixed, facilitative, transformative, and transformative/facilitative. The lengthy descriptions were classified with those who left it blank as missing/philosophical statement.

The survey was distributed to more than 400 mediators in Maryland. Two hundred and forty-nine surveys (62%) were returned. More than half of the respondents (56%) were highly experienced, ranging from at least 5 years of experience to well over 10 years. Only 3% had been practicing for less than a year. They mediated in upper and lower trial courts, in private practice, on organizational rosters, and in community mediation centers. The most common domains of practice included family, workplace, and business mediation, with numerous respondents with experience in more than one domain.

A cluster analysis was conducted on the response data using two approaches: (a) a tree/self-determined clustering approach and (b) a constrained optimal approach. Cluster analysis is a technique that groups observations together on the basis of similar variables or

characteristics. The goal was to identify patterns of behaviors that tend to be practiced together but to identify these patterns without any preordained ideas about what behaviors might be practiced together or what the behavioral groupings might be called. Five clusters of behavior emerged: a cluster of behaviors that all mediators reported using and four additional clusters beyond those that were commonly used. (These results can be found in Charkoudian et al., 2009.)

There were many behaviors that were reported to be commonly used by all respondents. Most mediator respondents indicated that during the mediation they:

- (1) Use open-ended questions or requests seeking information, issues or personal experiences;
- (2) Use questions or statements to determine underlying values or interests;
- (3) Summarize or paraphrase information, facts, or issues already mentioned by the participants and check for accuracy after paraphrasing;
- (4) Summarize or paraphrase feelings already mentioned by the participants;
- (5) Check out possible feelings of the participants, based on what the participants have implied;
- (6) Restate issues without taking sides;
- (7) Help the participants understand each other by noting commonalities behind the participants' concerns and clarifying where disagreement lies;
- (8) Ask the participants what solutions might meet all the participants' needs;
- (9) Encourage the participants to think of many options and use brainstorming at times.

A second significant finding was that there were four statistically distinct groups of strategies used, beyond those that were commonly used. These groups are identified in Table 1. This table was created by a thorough review of the answers to the survey questions within each cluster. Rather than listing every question and answer, the authors summarized the responses into strategy areas outlined in the table. For example, the first row regarding the goal of the mediation process came from a question which asked mediators to distribute 100 points among 5 possible goals in terms of importance to the mediation process. The row regarding a response to a shouting match was developed based on the answers to the multiple-choice question previously, which offered several options the mediator might use in response to a shouting match.

The authors purposely resisted labeling each approach as anything other than A, B, C, or D because our primary thesis was that there is no consensus on labels. It was our goal to highlight this fact and identify the challenge to the broader community, but not to attempt to resolve the disagreement about labels in this article. The complexity of this challenge is highlighted in the findings of Table 2.

When each of these four clusters was organized by the answers to the open-ended question, "what approach to mediation do you use?" there was no clear pattern of agreement. The results are summarized in Table 2. The cells indicate the number of individuals who fall into each cluster based on their survey results (rows) and self-identify as the style of mediation in the columns. For example, 2 individuals who self-identified their style as

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

	Cluster A	Cluster B	Cluster C	Cluster D
Goal of mediation process	Reaching agreement twice as important as any other goal	Reaching agreement is most important; participant control is distant second	Equal weight on reaching agreement and participant control	Participant control most important; reaching agreement half as important
Response to shouting match/ control of participant communication	Mediator would interrupt shouting match and redirect	Mediator would interrupt shouting match and redirect	Mediator would respond to shouting match by interrupting and reframing in terms of issues	Mediator responds to shouting match by letting participants finish and then reflecting back
Determination of issues for discussion	Mediator steers away from "unrelated" issues; mediator may introduce new issues	Mediator steers away from "unrelated" issues	Mediator steers away from "unrelated" issues	Participants can discuss any issue they want; nothing considered "unrelated"
Interpreting statements of one participant to other	Mediator interprets or explains one participant's comments to the other	Mediator interprets or explains one participant's comments to the other	Might ask participants questions to consider alternate explanations of other's actions	Would not interpret one participant's comments to another
Commenting on participants' proposals	Mediator likely to suggest that one participant give something up to get something; mediator likely to highlight a problem with participants' proposed solutions	Mediator likely to suggest that one participant go along with another's proposal in a caucus	May encourage one participant to go along with another's proposal in a caucus	Would not comment on proposals
Mediator suggestions	Mediator likely to make suggestions or steer toward particular outcome	Mediator may make suggestion without pushing the idea; would only make proposal when participants are stuck or ask for help	Mediators would not give advice or suggestions, even when asked	Mediators would not give advice or suggestions, even when asked

Table 1
(continued)

	Cluster A	Cluster B	Cluster C	Cluster D
Pressure for agreement	Mediator strongly encourages agreement, indicating consequences of not reaching agreement; focus and pressure on staying in mediation	If participants wish to terminate, mediator reminds them that process is voluntary	If participants wish to terminate, mediator reminds them that process is voluntary	If participants wish to terminate, mediator reminds them that process is voluntary
Use of ground rules	Mediator sets ground rules at beginning and enforces throughout	Mediator sets ground rules at beginning and enforces throughout	Mediator sets ground rules at beginning and enforces throughout	Mediator does not set ground rules
Use of caucus	Mediator uses caucus frequently for multiple reasons	Mediator uses caucus to flesh out issues	Mediator uses caucus to flesh out issues or determine whether mediation needs to be stopped	Mediator uses caucus if suspects fear of retaliation
Focus of conversation	Mediator focuses conversation on future	Mediator focuses conversation on future	Mediator focuses conversation on future	Participants maintain control of dialogue and what to focus on
Mediator analysis of relationship	Mediator may point out possible reason for the conflict	Mediator might give own opinion of dynamic of relationship	Mediator would not comment on dynamics of relationship	Mediator would not comment on dynamics of relationship

Table 2

A Comparison of Self-Identified Mediation Style with Actual Survey Clusters

	Self-identified mediation style								Total
	Commu- nity	Direc- tive	Facili- tative	Mixed	Trans- formative	Trans- formative/ Facilitative	Missing/ Philosophical statement		
Statistically identified cluster from survey response	A	2	2	1	7	1	1	29	43
	B	0	2	12	14	2	4	35	69
	C	0	0	22	9	3	9	23	66
	D	6	0	15	2	8	5	13	49
	Total	8	4	50	32	14	19	100	227

community fell into cluster A; 0 fell into cluster B; 0 fell into cluster C; and 6 fell into cluster D.

In Table 2, we see that those who label themselves as facilitative, mixed, and transformative/facilitative report using strategies that land them in all four clusters, with no clear sense of agreement about which cluster would be best labeled with which title. While those who label themselves transformative and community mediators tend to have more members in cluster D, they still have members in other clusters as well. It is also worth noting that 44% of the respondents resisted any label for the approach they use—either leaving the question blank or writing a lengthy description which could not easily be classified as one of the more common labels. It is also worth noting that not a single person self-identified as an evaluative mediator, even though some of the behaviors described ascribed to cluster A would fit Riskin's (1994) definition of evaluative mediation.

These findings point to the fact that while there are some patterns to the strategies mediators report using, there is no consensus within the mediation community about what sets of strategies fall within what mediation style labels.

Study 2: Behavioral Investigation of Mediators' Use of a Mix of Strategies

The database for this study was developed as part of the larger study coordinated by the Maryland Association of Community Mediation Centers in 2003, referenced previously. Community mediation programs in Maryland, Pennsylvania, Delaware, Washington, D.C., Northern Virginia, and New York, as well as a mediation program in a Maryland prosecutor's office, provided cases for observation for this research. Cases included on the day of trial small claims cases, criminal misdemeanor cases, and interpersonal disputes referred by the police, government agencies, or community groups. Data were available from a total of 56 cases that were observed and coded.

Two researchers were assigned to each case—one to code mediator behavior and one to code participant behavior. Behavior codes were developed through a review of the mediation literature and consultation with experienced mediators. Prior to beginning the research, both researchers were required to reach an inter-rater reliability of a Kappa of .75

or above for each behavior code with the principal investigator. Codes were entered into hand-held computers during the actual mediation. Each activity was coded each time it appeared in each speaking turn. If a speaking turn lasted for more than 30 s, and the subject used the same activity, then it was coded again.

This observation research allowed researchers to see the specific behaviors actually used by mediators using predefined codes such that researchers could measure the prevalence of

Table 3
Variables and Definitions for Observation Study

Mediator behaviors	Definitions
Listening	Number of times per mediation that mediators summarize what was said or asked open-ended question.
Fact	Number of times per mediation that mediator asked closed question or question to establish a fact.
Interest/Value	Number of times per mediation that mediators reflect or ask to get to underlying value or interest.
Neutral issue	Number of times per mediation that mediators articulate issue using neutral language.
Feeling	Number of times per mediation that mediators reflect back feeling expressed (but not necessarily articulated) by participant.
Common ground	Number of times per mediation that mediators point out common ground among participants.
Explain	Number of times per mediation that mediators explain one participant's position to the other.
Opinion	Number of times per mediation that mediators express their opinion about the situation.
Cheerlead	Number of times per mediation that mediators indicate that they think participants are doing a good job.
Advocate/Support	Number of times per mediation that mediators advocate for or support what one participant has expressed.
Suggestion	Number of times per mediation that mediators suggest a possible solution.
Mediator solution	Number of times per mediation that mediators advocate for their own ideas for solutions.
Ask for suggestion	Number of times per mediation that mediators ask for one suggestion from participants.
Request reaction	Number of times per mediation that mediators ask what participants think about a possible solution.
Brainstorm	Number of times per mediation that mediators ask participants to think of a number of ideas.
Participant control	Number of times per mediation that mediators tell participants that they are in control of the outcome.
Summarize possible solutions	Number of times per mediation that mediators summarize solutions that participants have presented.
Behavior	Number of times per mediation that mediators tell participants how to behave in the mediation.

each strategy throughout the mediation. The 18 codes used to classify mediator strategies are defined in Table 3.

The data from this study were used for a number of different analyses. In the study reported here, we examined the correlation between the frequencies of use of each of the mediator behaviors to understand which mediator behaviors are likely to co-occur and which are not. A high positive correlation between two behaviors would indicate that those behaviors were likely to be used at a similar rate within a given mediation (e.g. if the frequency of usage of one was high, the frequency of usage of the other would be high as well). On the other hand, a high negative correlation between two behaviors would indicate that those behaviors were used with dissimilar frequency. The combination of high positive correlations of some pairs of behaviors and high negative correlations of other pairs of behaviors would be suggestive of a mediator who prefers some behaviors over others, at least within a given mediation. High positive correlation among all of the behaviors would indicate that a mediator uses a mix of strategies or an eclectic approach. A zero or insignificant correlation among behaviors would indicate no discernible pattern of mediator strategic preferences.

Statistically significant positive correlations were found among some behavioral codes, leading to the conclusion that some interventions were more often used together into something resembling an overarching strategy. Table 4 summarizes the correlations into groupings of interventions by co-occurrence. The left-hand column indicates two distinctive overarching strategic groups, each group composed of behaviors that tended to be used together. The right-hand column indicates mediator behaviors that were less likely to occur with several of the behaviors in group 1 and group 2, respectively. (The detailed results can be found in Charkoudian et al., 2009.)

The two main groups of significant positive correlations in the observation study tend to reflect Riskin's (1994) original dichotomy of facilitative and evaluative—with group 1 tending to have participants in control of the discussion and the outcome and group 2 having mediators in control of the discussion and contributing significantly to the outcome. If mediators were mixing these two strategies, we would see positive correlations (or at least no negative ones) with the behaviors in each strategic group. By and large, this was not the case. The generally negative correlation of strategies across these two groups suggests that mediators are not mixing these two types of strategies within a given case.

Table 4
Groups of Behaviors Likely to be Used Together and Unlikely to be Used Together

	These behaviors are likely to be used with each other	And unlikely to be used with these behaviors
Group 1	Interest/Value, Feeling, Neutral Issue, Bigger picture, Common ground, Request reaction, Brainstorm, Participant control, Summarize possible solution, Cheerlead	Opinion, Behavior, Suggestion
Group 2	Fact, Explain, Suggestion, Opinion, Advocate/Support, Mediator Solution, Behavior	Interest/Value, Feeling, Neutral issue, Brainstorm

It is true that there were some group 2 directive strategies—such as asking questions to establish a fact—that while more highly correlated with other directive strategies were not significantly negatively correlated with the group 1 nondirective ones (e.g. the frequency with which the mediator reflected about underlying values or interests). This does not necessarily mean that mediators were mixing directive and nondirective strategies, just that a given behavior (e.g. asking questions to establish a fact) might occasionally be asked by mediators using both sets of overarching strategies, but not necessarily in the same tone or for the same purposes. The same could be said of cheerleading and common ground, behavioral codes in the nondirective group that were significantly correlated with each other but not significantly negative in their correlation with the more directive strategic behaviors of group 2. When we look at the more clearly nondirective strategies (interest/value, feeling) as compared to the more clearly directive ones (opinion, suggestion, behavior), the average correlations are significant, high, and negative.

These behavioral findings challenge the results of the survey data from study 1, which found a set of common mediator interventions that all mediators in the survey claimed to use often or sometimes. The behaviors in this common self-reported behavioral set included tactics that would have been consistent with the codes of brainstorm, interest/value, neutral issue, and feelings in the behavioral study. Yet those mediators whose actual behaviors fall into group 2, the more directive group, did not tend to use these common, nondirective strategies in the cases that were observed. The strategies they used were, in fact, negatively correlated with these four strategies, which means they do not use these strategies in conjunction with offering their opinions and suggestions.

There are a few possible explanations for this pattern. First, the mediators in the survey group and the observed group were not the same individuals (although there may have been some overlap). So it is possible that those in the survey really do use the list of common interventions and those who were observed do not. Second, it could be that all mediators do use the common interventions, but not together in the same mediation with the more directive strategies found in group 2. That is, they mediate in a directive way or not, but they do not mix directive and nondirective strategies in the same mediation. Finally, it is possible that when mediators are asked to self-report their strategies they report those that they think they use or think they should be using, but are simply unaware of their actual behavior.

This last possibility would be consistent with Riskin's (1994) claim that while mediators may borrow strategies from different approaches, evaluative mediators are likely to attempt to use facilitative skills, but are less likely to have the skills to mediate within a facilitative framework. Because there is not a direct connection between the reported strategies of the mediators who completed the actual surveys and the performance of those who participated in the observation study, it is not possible to distinguish among these possibilities. However, Kressel, Deutsch and Coleman (2000) observation that mediators do "tend to enact the same style from case to case, despite variety in issues and dynamics" would point toward the likelihood that mediators use either a reflective or a directive approach and not a mix, depending on the case.

Study 3: Hints of What Might Be Beyond the Black Box

The data gathered in the comprehensive study referenced previously were also used in an exploratory way to assess the impact of mediator strategy on participant satisfaction. The primary purpose for which the data were analyzed was to determine whether a gender or racial match between mediators and participants affected the outcome of the mediation. (Although they are tangential to the discussion here, there were important but different effects for both gender and racial matching. For example, with mediator strategy held constant, participants working with a mediator of the opposite gender, when the other participant was the same gender as the mediator, were less satisfied with the mediation process than participants working with a mediator of the same gender as they. The details of the gender and race effects may be found in Charkoudian & Wayne, 2010).

To test for gender and racial matching, the multivariate regression analysis included variables created from the coding of mediator behavior. In the current analysis, these were regressed on the results from the postmediation participant surveys. Both the mediator behaviors and the participant surveys are defined in Table 5.

Directive mediator strategies were significantly and negatively associated with participant reports of effective communication and satisfaction with the process. The lower satisfaction associated with directive strategies is consistent with findings in Wall et al. (2011). Listening was statistically significant and positively associated with “mediator listened without judging” in one of the two equations in which it was included. (The details of the analysis may be found in Charkoudian & Wayne, 2010). The fact that these mediator behavioral variables had a significant impact on participants’ experiences points to the potential for more clear findings if a study were designed specifically to understand the impact of mediator stylistic behaviors on participants’ experiences.

Table 5
Variable Definitions for Mediator Strategies and Participant Responses

Mediator strategies	
Listening	Number of times mediators summarize/reflect or ask open-ended questions
Explaining	Number of times mediators explain one participant’s position to the other or advocate for/support what a participant has expressed.
Directive	Number of times mediators express an opinion, tell participants how to behave, make a suggestion, or advocate for the mediators’ own solution.
<i>Dependent variables</i>	
Effective communication	<i>Note: Use 5-point Likert scales</i> Average of responses from the following two questions: “I was able to express myself, my thoughts, and my concerns during the mediation process,” and “The mediators understood what I was expressing.”
Mediator listened without judging	The mediators listened to what I had to say without judging me or my ideas.
Mediator took sides	The mediators seemed to take sides.
Satisfied with process	How satisfied are you with the way the mediation was conducted?

Discussion

Implications for Research

The findings in the studies outlined previously suggest two possible directions for research. One option is to prioritize research on understanding and developing consensus on definitions of mediator styles. This would involve drilling down into mediator strategies, not assuming that labels uniformly mean the same thing, and taking self-reported strategies with some skepticism. This could involve working with the practitioner community toward consensus on labeling various mediator approaches and will likely require developing more detailed divisions than the classic dichotomies of facilitative versus evaluative or problem-solving versus transformative. This approach would certainly benefit the practitioner community, where there would be great value to having agreement on a series of labels to identify the various mediation styles.

Another option is to ignore labels altogether, leaving that issue to the practitioner community, and focus on mediator behaviors. Ultimately, the practitioner community and the agencies that use mediation need to know the short- and long-term effects of mediator strategies (or combination of strategies). If researchers found that listening to, identifying, and discussing emotions in a mediation allow participants to have a stronger long-term relationship, then it may be irrelevant (from a research perspective) what mediators call the style they use, as long as it includes focusing on these emotions. If mediators' encouraging participants to consider their worst alternate to a negotiated agreement increases settlement, then that may be the important key research finding, regardless of what those who practice it call it. The practitioner community still needs to wrestle with the issue of labeling the types of mediation for training, quality assurance, and consumer education purposes. But an important contribution the research community can provide is an understanding of what mediators actually do and the impact of those actions.

Either of these approaches is best performed through a combination of behavior coding and surveys of mediators and participants. While most mediation research uses surveys, behavior coding is rarely used. Notable exceptions are Pruitt, Peirce, McGillicuddy, Welton and Castrianno (1993); Charkoudian et al. (2009); and Wall et al. (2011). This is probably because behavior coding is expensive, time intensive, and can be seen as intrusive, since it requires researchers to observe during the mediation process or it requires videotaping the mediation session.

Implications for Mediation Practitioners

Over time, research of the kinds sketched previously will inform consumers about mediation as well as inform program administrators and those responsible for mediator quality assurance. However, while waiting for the research and the consensus on style definitions, practitioners and program administrators have an ethical obligation to be especially careful around the issue of defining mediation. Practitioners and others who are explaining mediation to potential participants should be explicit about the mediation experience

participants may have. These descriptions need to go well beyond labels (e.g., facilitative, transformative, inclusive, evaluative) and include detailed descriptions of the kinds of things that a mediator might do and clearly identify what the mediator will not do. These explanations will honor participants' self-determination and give them an opportunity to make an informed choice about what process to use and how to engage in that process.

Similarly, program administrators, roster managers, and others responsible for quality assurance systems will need to go beyond the traditional labels when telling mediators what is expected of them. This will require ongoing dialogue with mediators and feedback about real mediations. In these conversations, program administrators and roster managers must articulate in detailed terms the mediator strategies that they expect mediators to use and those they consider off limits in their program.

Some Vexing Questions

Where Does Style Research Rank in Importance?

The findings reviewed previously should raise concerns for mediators, roster managers, program directors, judges, researchers, and potential users of mediation. They identify the fact that while there are patterns of mediator strategic/stylistic behaviors, mediators appear to lack clarity and consensus about the labels they apply to their stylistic behaviors, and some resist labeling what they do at all. The findings also raise questions about whether mediators who claim to use an eclectic mix of all of the various mediator approaches really do so, at least within the same mediation. The findings from Study 3 also suggest that different mediator strategies may produce a qualitatively different experience for participants. All of these suggest that the topic of mediator style is a central one, but one much in need of conceptual and empirical clarification. At bottom, the priority for the research community should be to clearly understand the effects of various mediator behaviors on mediation outcomes. Such knowledge will support the development of best practices and ethical practices.

Why Has So Little Progress Been Made?

To date, little progress has been made on understanding the connection between specific mediator strategies and mediation outcomes because to do so effectively requires observation of real mediations. Studies involving mediator self-reports are limited in their scope. However, observational research is time-consuming and expensive. Convincing funders of the need for behavior coding research will be a challenge. Most agencies are willing to fund basic program evaluation. Those funders willing to support more may be interested in cost-benefit analysis. Few funders understand that the danger of studying mediation as though it is a uniform treatment is that the outcomes of interest may be masked by the mixed nature of the intervention.

Behavior coding also requires the cooperation of mediators and program administrators. If program administrators can be convinced of the value, those participating on a roster may be required to allow researchers to observe as a requirement to stay on the roster; however, those in private practice may see little benefit to participating in an activity they may see as intrusive.

Another challenge to behavior coding is identifying when the intervention is beginning. This is a relatively simple decision in a day of trial program, where participants do not become aware of the option to mediate until the mediation is about to begin. However, in other kinds of mediation, the mediator may do significant preparation work with both participants and their attorneys by phone or in person before the official mediation begins. Without capturing these interactions, researchers may be missing out on key mediator strategies that affect the outcomes of the mediation.

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