

Commentary 2

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Mediation is hard to study. Mediators often claim they never approach two cases in the same way and that mediation is an art not a science. While considerable progress has been made over the years to challenge these claims, the aspects of the mediation process most difficult to conceptualize, measure, and explain are the specific actions mediators take to help parties reach agreements. The term “mediator style” tries to capture these behaviors, but does so only imprecisely, and I will argue here incompletely. Thus, we are left with these three vexing questions that are the subject of this forum. In what follows, I will comment on the three papers prepared for this issue and address the vexing questions by drawing on the changing role that mediation is playing in labor management negotiations and dispute resolution systems today.

How Important is Research on Mediation Style Relative to Other Aspects of the Process?

I agree with a theme running through each of the three papers in this collection: Models of mediation should incorporate but not attempt to separate out the independent effects of mediator style. McDermott and Bingham argue that style is contingent on and interdependent with the environment, design, and multi-party behaviors that together shape the process and results of mediation. Passive–active, reflexive–directive, and facilitative–transformative classifications do not appear to be good independent predictors of mediation outcomes and appear to be associated with only small differences in participants’ satisfaction with the process or perceptions of procedural justice.. This, however, does not imply that anything goes, tactics are random, or mediation is an art and not amenable to social science theorizing or empirical research. Instead, we need to take a systems approach to the study of this topic, study it through the full negotiations cycle, and relate mediator behavior/style to changes in the environment that change the power, norms, and expectations of the parties.

Why Little Research on Mediator Style?

The most direct answer to this question, one mentioned by all three authors, is that it is extremely hard to measure what mediators do. Retrospective interviews or surveys of mediators or those mediated are at risk of significant measurement error for at least two reasons. First, Chaikodan notes that retrospective accounts risk measuring what respondents think mediators should have done rather than what mediators actually did in a given case. Second, respondents are also likely to conflate outcome with process—the more satisfactory the outcome, the more they are likely to attribute the outcome to mediator

behavior; the less satisfactory the outcome, the more parties may attribute their disappointment to an ineffective mediator, regardless of the intensity or complexity of the conflict. Moreover, if as Bingham and McDermott both suggest, style is partly a function of context and dispute resolution system design, the external validity of laboratory research designs may be limited. Finally, if style is dynamic, (i.e., varies over the negotiations cycle), accurate measurement requires data collection at different points in the cycle. This means that observational studies are most informative but they also are most expensive and difficult to carry out.

What Directions for Style Research?

These difficulties should inform, not discourage, research on mediator style or behavior. We have learned a great deal from research using all of the methods critiqued before and can continue to advance our understanding further by taking the features noted before into account in designing studies of this subject. Large sample studies such as those carried out by Bingham and others at the Postal Service or by McDermott and colleagues at EEOC are essential for evaluating the effectiveness of particular mediation programs. Moreover, with careful attention to measurement and the limits of retrospective data, these authors were able to generate new insights into the role of transformative and facilitative and other strategies. Policy evaluation studies like these offer great opportunities to test specific theoretical propositions.

I agree with the authors that observational studies are particularly appropriate to study mediator behavior/style. But I will go a step further—comparative observational studies that either hold constant context and design and vary mediator style or observe mediator style in varying contexts or systems would provide the variation across cases and mediators needed to sort out whether mediators vary their style or have personal styles they apply across cases regardless of case-specific circumstances. Kolb's (1983) comparison of public and private sector labor mediation would be an early example of the latter approach. She observed significant differences in mediator styles among mediators operating in these two contexts (private sector collective bargaining with the right to strike and public sector collective bargaining without the right to strike). Under the strike threat, mediators tended to "orchestrators"; in public sector settings without the right to strike, mediators tended to be "deal makers."

The analysis of mediator behavior also needs to be dynamic—exploring whether style follows predictable patterns from early stage to deadline negotiations. This was a key point in Kressel's (1972) model of labor mediation and featured prominently in my own theoretical model of labor mediation (Kochan & Jick, 1978). While the dynamics of mediator behavior are difficult to capture in quantitative, retrospective studies, they can and have been readily captured in more qualitative participant observer studies. For example, in a participant observer study of a complex negotiation process involving Kaiser Permanente and a coalition of unions, we showed how a facilitative style evolved to a more active or directive style as the negotiations deadline approached and the issues involved became more distributive in nature (McKersie et al., 2008). The conclusion I reach from that research and from my own mediation experience is that these dynamic and matching

models of mediator style/behavior require sophisticated use of qualitative research methods.

To complicate matters further, new theories of labor mediation are needed to capture changes in the environment (contexts) of labor management relations, which influence negotiator behavior. Recent national surveys report that nearly half of collective bargaining processes mix traditional or positional negotiations with interest-based processes (Cutcher-Gershenfeld, Kochan, Barrett & Ferguson, 2007). The roles and styles of mediators vary considerably across these two negotiations models. Third-party assistance in interest-based processes take on highly scripted characteristics normally described as facilitation, which involve coaching the parties in the use of various problem-solving techniques. Moreover, as noted before, most labor negotiations reflect a mixture of interest and traditional negotiations tactics in part because they involve a mix of integrative and distributive issues (McKersie et al., 2008). In these cases, mediators need to be able to mix styles of interaction accordingly at different stages of the negotiations cycle. This is another illustration of Bingham's point that negotiator behavior shapes mediator style. Thus, mediator style needs to be seen as an interdependent part of the larger negotiation system and process and cannot be easily studied as an independent construct.

In the labor field, mediation is often combined with a variety of other dispute resolution processes that require the third party to change styles and behaviors as one mixes or transfers between the roles of mediator, fact finder, arbitrator, or change agent. One can see this most clearly now in the public sector as state and local governments and elected officials exert pressures on negotiators and third parties to generate significant changes in collective bargaining processes and outcomes. As pressures for change in public schools and in other branches of public service mount, elected officials are pressuring negotiators to negotiate (or risk having imposed) formal performance evaluation, merit-based pay, longer school hours, restructured health and/or pension benefits, and other changes that improve school performance and control costs. These changes in the context of negotiations are imposing new demands on mediators to act in ways more similar to change agents than purely neutral third parties. Thus, these external agents are having a profound effect on the labor mediation process. National labor policy debates have also opened up discussion of how to best structure mediation in the dispute resolution system, governing the negotiations of an initial contract after workers have voted to form a union. Recognition that there is a high failure rate of first contract negotiations has led to proposals that arbitration, combined with mediation of various sorts, be introduced in first contract settings. This type of dispute resolution system would likely encourage a variety of different mediation styles and behaviors, whereby third parties combine mediation and arbitration in creative ways. Once again, the point here is that research that tries to capture the style of mediation that evolves in these settings has to take into account the design, sequencing, and dynamics of the overall negotiations and dispute resolution system in which these processes are embedded.

Labor management negotiations are also increasingly challenged by the growing range of alternatives to negotiated agreements. The ability to escape negotiations altogether (Walton, Cutcher-Gershenfeld & McKersie, 1994) by outsourcing work domestically or

globally has weakened the incentive of some employers to negotiate with labor unions and therefore limits the effectiveness of directive mediation styles.

These examples illustrate how the labor negotiation process has evolved faster than have theories and empirical studies of mediation. All illustrate how context and system design will influence mediator style. Thus, in addition to more carefully designed empirical studies, new theory is needed to conceptualize how mediation styles adapt to changes in context and changes in negotiator behavior. So my bottom line regarding research on mediator style is yes, we need more research on this topic, but it needs to be embedded in a solid theoretical understanding of how mediator style is shaped by the larger system in which it is embedded. And most of all, we need better and more up-to-date theories of the changing contexts and designs of these systems.

References

- Cutcher-Gershenfeld, J., Kochan, T., Barrett, B., & Ferguson, J. P. (2007). Collective bargaining in the twenty-first century: A negotiation institution at risk. *Negotiation Journal*, 23(3), 249–265.
- Kochan, T. A., & Jick, T. (1978). The public sector mediation process: A theory and empirical examination. *Journal of Conflict Resolution*, 22, 209–240.
- Kolb, D. (1983). *The mediators*. Cambridge: MIT Press.
- Kressel, K. (1972). *Mediation: An exploratory survey*. Albany, NY: Association of Labor Mediation Agencies.
- McKersie, R. B., Sharpe, T., Kochan, T. A., Eaton, A. E., Straus, G., & Morgenstern, M. (2008). Bargaining theory meets interest-based negotiations: A case study. *Industrial Relations*, 47, 66–96.
- Walton, R. E., Cutcher-Gershenfeld, J., & McKersie, R. B. (1994). *Strategic negotiations*. Boston, MA: Harvard Business School Press.

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