


2017 Report of the ABA Section of Dispute Resolution Task Force on Research on Mediator Techniques

https://www.americanbar.org/groups/dispute_resolution.html

Roselle L. Wissler




Background of the Task Force

Assignment: Compile and distill empirical research findings on effects of mediator actions on mediation outcomes

Ultimate Goals:


- Determine future research needs
- Develop on-going links between researchers & practitioners
- Use research findings to enhance mediation quality

Members: mediators, program administrators, researchers, law professors



Studies Reviewed

- **Criteria**
 - Any non-binding process with third party; any type of dispute
 - Empirical data on the effects of mediator actions on outcomes
- **Identified 47 studies**
 - 39 - mediation; 8 - another process alone or combined with med
 - ENE, med-arb, settlement conference, facilitation
 - Most were general civil, domestic relations, labor-management, community & limited jurisdiction
 - Most were court-connected/referred, formally filed case/complaint
 - Most had single neutral, legal background
 - All were in person



Mediator Actions & Outcomes Studied

# of studies	Settlement and related outcomes	Disputants' Perceptions, Relationships	Attorneys' Views
Pressing, directive	18	8	0
Offer opinion, evaluate, recommend	25	9	4
Elicit suggestions, solutions	5	3	0
Address emotions, relations, hostility	11	8	1
Rapport, empathy, agenda, process	20	9	1
Pre-mediation caucus	3	2	0
Caucusing during mediation	9	6	1



of effects

# of effects	Reduced settlement, negative effect	No effect	Increased settlement, positive effect
PRESSING OR DIRECTIVE ACTIONS			
Settlement and related outcomes	5	14	11
Disputants' perceptions or relationship	6	6	1
RECOMMEND, SUGGEST, EVALUTE/OPINE			
Settlement and related outcomes	2	21	19
Disputants' perceptions or relationship	8	12	7
Attorneys' perceptions	1	3	2



of effects

# of effects	Reduced settlement, negative effect	No effect	Increased settlement, positive effect
ELICITING SUGGESTIONS, SOLUTIONS			
Settlement and related outcomes	0	2	4
Disputants' perceptions or relationship	0	3	2
ADDRESSING EMOTIONS, RELATIONSHIPS			
Settlement and related outcomes	2	4	4
Disputants' perceptions or relationship	0	5	8
TRY TO REDUCE HOSTILITY, TENSIONS			
Settlement and related outcomes	2	2	2



# of effects	Reduced settlement, negative effect	No effect	Increased settlement, positive effect
RAPPORT, TRUST; EMPATHY, PRAISE			
Settlement and related outcomes	2	5	7
Disputants' perceptions or relationship	0	2	2
STRUCTURING THE ISSUES, AGENDA			
Settlement and related outcomes	1	4	7
Disputants' perceptions or relationship	1	1	2
OTHER "PROCESS" APPROACHES			
Settlement and related outcomes	5	5	5
Disputants' perceptions or relationship	1	4	5

# of effects	Reduced settlement, negative effect	No effect	Increased settlement, positive effect
USING PRE-MEDIATION CAUCUSES			
Settlement and related outcomes	1	1	3
Disputants' perceptions or relationship	2	1	2
USING CAUCUSES DURING MEDIATION			
Settlement and related outcomes	1	7	3
Disputants' perceptions or relationship	4	5	2

Summary and Cautions:

- No action has clear, uniform effects – i.e., no action has consistently positive effects, negative effects, or no effects on each outcome
 - Use caution when drawing conclusions from a single study
- For many actions, even when most studies found that action had positive effects or no effects, some studies also found it had negative effects
 - We can say that action CAN HAVE a positive effect and talk in terms of GREATER POTENTIAL for positive than negative effects
- Some actions had different effects on settlement & related outcomes than on disputants' perceptions & relationships

Actions with GREATER POTENTIAL for Positive than Negative Effects on BOTH Settlement AND Disputants' Perceptions/Relationships

- Eliciting disputants' suggestions or solutions
- Giving more attention to disputants' emotions, relationship, and sources of conflict
- Working to build trust and rapport, expressing empathy or praising the disputants, and structuring the agenda
- Using pre-mediation caucuses focused on establishing trust



Actions with MIXED Potential for Positive AND Negative Effects OR DIFFERENT Effects on Settlement than on Disputants' Perceptions/Relationships

- Recommending a particular settlement, suggesting options, offering evaluations or opinions
- Pressing or directive actions
- Caucusing during mediation



Next Steps: Expand & Improve Empirical Knowledge

- **Existing studies:**
 - More refined analysis – how aspects of studies, disputes, contexts might explain different effects seen in different studies
 - Expand to broader set of studies in mediation and other fields
- **Future studies:**
 - Develop uniform, reliable, and valid measures and use rigorous methodologies
 - Examine factors that could alter the effects of actions
 - Examine unstudied/understudied actions and outcomes



Next Steps: Expand Links to Mediation Community

- Strengthen collaboration between researchers and mediation community
 - Facilitate exchange of research findings and practice questions
 - Facilitate researcher access
 - Observe sessions, survey disputants, random assignment
 - Develop research guidelines, protocols to address mediator concerns
- Create ways to incorporate research findings into practice
 - e.g., training guides, standards, feedback mechanisms
- ABA Dispute Resolution Section working group



Full Task Force Report available at:

https://www.americanbar.org/groups/dispute_resolution.html



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How Do Mediator Actions Affect Mediation Outcomes?

The Report of the Section's Task Force on Research on Mediator Techniques Offers a Few Clues

Roselle L. Wissler and Gary Weiner

Mediators frequently make assertions – both expressly and implicitly – about which actions and approaches are “best” in terms of their effect on mediation outcomes. Because these statements are often based on assumptions, anecdotal observations, and untested beliefs, in 2013 the ABA Dispute Resolution Section created a Task Force on Research on Mediator Techniques and asked it to review the empirical research and try to determine which actions really are beneficial, which are detrimental, and which have no effect on mediation outcomes.

The Task Force members included mediators, researchers, law professors, program administrators, and other professionals with a range of experience and expertise. The work of the Task Force produced a 69-page final report, which was adopted by the ABA Section of Dispute Resolution Council in August 2017.¹

This description of the Task Force’s work and summary of its analysis ends with a general conclusion: more and better empirical research on this subject is needed, and until we have it, we should be careful in making broad claims about “best” techniques.

Studies, Actions, and Outcomes Examined

The Task Force cast a wide net, reviewing studies of any non-binding process in which a third party helped disputants try to resolve any type of conflict. To be considered relevant, the studies had to contain empirical data examining the effects of one or more mediator actions or approaches on one or more mediation outcomes.² We reviewed a final set of 47 studies. Thirty-nine studies involved only mediation and eight studies involved another process in addition to or instead of mediation.

The Task Force organized the wide range of mediator actions and styles examined in the studies into seven categories (see Table 1) and grouped the mediation outcomes into three categories (see Table 2). Where data was available, we examined the empirical findings regarding the effects of each category of mediator actions on each set of mediation outcomes and reported the findings separately for each of these mediator action-mediation outcome pairs.

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¹ The full Report is available at https://www.americanbar.org/groups/dispute_resolution.html.

² We limited our inquiry to research findings reported in English.

Table 1 Mediator Actions Examined in the Studies
(1) pressing or directive actions or approaches
(2) offering recommendations, suggestions, evaluations, or opinions
(3) eliciting disputants' suggestions and solutions
(4) addressing disputants' emotions, relationships, or hostility
(5) working to build rapport and trust, expressing empathy, structuring the agenda, or other "process" styles and actions
(6) using pre-mediation caucuses
(7) using caucuses during mediation

Table 2 Mediation Outcomes Examined in the Studies
(1) settlement and related outcomes, e.g., joint goal achievement, personalization of the agreement, reaching a consent order, or filing post-mediation motions or actions
(2) disputants' relationships or ability to work together and their perceptions of the mediator, the mediation process, or the outcome
(3) attorneys' perceptions of mediation

The studies covered a range of dispute types, including general civil, domestic relations, labor-management, community, and others. A majority of studies involved a single mediator and court-connected mediation. But the studies varied greatly in other characteristics of the mediators and the mediation context; whether they examined specific mediator actions or looked at mediator approaches comprised of multiple actions; how those actions or approaches, as well as outcomes, were defined and measured; the data sources and research methodology used; and the robustness of the findings.³

All this variation could contribute to different findings across the studies and made "apples to apples" comparisons extremely challenging, so drawing broad conclusions was difficult.

Empirical Findings: Effects of Mediator Actions on Outcomes

The Task Force's compilation and analysis of existing empirical research found that none of the categories of mediator actions has clear, uniform effects across the studies – that is, none consistently has negative effects, positive effects, or no effects – on any of the three sets of mediation outcomes.⁴ For a majority of the action-outcome pairs, an equal or larger number of studies found that mediator actions had *no* effect as found they *had* an effect (either positive or negative). And for a minority of the action-outcome pairs, even when most studies found a particular action had positive effects or no effects, at least two studies found the action had negative effects.

³ Assessing the methodology of each study in detail was beyond the resources of the Task Force. Accordingly, the report of the empirical findings includes all studies reviewed and treats them with equal weight, regardless of how rigorous their research methodology and data analysis were.

⁴ See Tables V.H.1 to V.H. 3 in the Report, *supra* note 1.

As a result of this variation in findings across studies, we cannot conclude with confidence that a mediator action *will have* a positive (or negative) effect on mediation outcomes, only that the action *can have* a positive (or negative) effect and, in some instances, could have an effect in the direction opposite from that seen in the majority of studies.

A summary of the research findings for each category of mediator actions and each set of mediation outcomes follows, ending with overall conclusions about which mediator actions, on balance, appear to have a greater *potential* for positive (or negative) effects on mediation outcomes.

Pressing or Directive Actions

These actions generally either increased or had no effect on settlement, but in some studies were associated with reduced settlement, less joint goal achievement, and more post-mediation adversarial motions being filed. Virtually all studies found mediator pressure on or criticism of disputants either had no effect or had negative effects on disputants' relationships and perceptions of mediation. Thus, pressing or directive actions have the potential to increase settlement, but they also have the potential for negative effects on settlement and related outcomes and especially on disputants' perceptions and relationships.

Offering Recommendations, Suggestions, Evaluations, or Opinions

Recommending or proposing a particular settlement, suggesting possible options or solutions, or offering some form of case evaluation or other views about the dispute or its resolution generally either increased or had no effect on settlement. These actions were not related to the personalization of mediated agreements, reaching a consent order, or filing post-mediation adversarial motions or enforcement actions. Offering recommendations, suggestions, evaluations, or opinions had mixed effects on disputants' relationships and perceptions of mediation, with studies finding positive, negative, and no effects. With regard to attorneys' perceptions of mediation, these actions generally either had no effect or were associated with more favorable views, with the latter seen especially in Early Neutral Evaluation. Thus, this set of actions has the potential for positive effects on settlement and on attorneys' perceptions of mediation but has the potential for both negative and positive effects on disputants' relationships and perceptions of mediation.

Eliciting Disputants' Suggestions or Solutions

These actions generally increased settlement and also were related to disputants' greater joint goal achievement, reaching a consent order, and being less likely to file a post-mediation enforcement action, but they were not related to the personalization of mediated agreements or the filing of post-mediation adversarial motions. Eliciting disputants' suggestions or solutions either had no effect or had positive effects on disputants' relationships and perceptions of mediation. Thus, eliciting disputants' suggestions or solutions has the potential to increase settlement and enhance disputants' perceptions and relationships, with no reported negative effects.

Addressing Disputants' Emotions, Relationships, or Hostility

Giving more attention to disputants' emotions, relationships, or sources of conflict generally either increased or had no effect on settlement, and either reduced or had no effect on

post-mediation court actions. These mediator actions either had no effect or positive effects on disputants' relationships and perceptions of mediation. Trying to reduce emotional tensions or control hostility had mixed effects on settlement, with studies finding positive, negative, and no effects; these actions were not examined in relation to disputants' perceptions. Thus, giving more attention to disputants' emotions or relationships has the potential to increase settlement and enhance disputants' relationships and perceptions, but it also has the potential to reduce settlement. Addressing disputants' hostility has the potential both to increase and to reduce settlement.

Working to Build Trust, Expressing Empathy, Structuring the Agenda, or Other "Process" Actions

Working to build rapport and trust with and between the disputants, expressing empathy, praising the disputants, or structuring the issues and agenda generally either increased or had no effect on settlement. Other process-focused actions and approaches, such as summarizing, reframing, or using a facilitative or nondirective style, had mixed effects on settlement, with studies finding positive, negative, and no effects. These various mediator actions generally either had no effect or had positive effects on disputants' relationships and perceptions of mediation. Thus, working to build trust, expressing empathy or praise, and structuring the agenda have the potential to increase settlement and enhance disputants' relationships and perceptions. Other "process" actions have the potential for positive effects on disputants' perceptions and settlement, but they also have the potential to reduce settlement.

Using Pre-Mediation Caucuses

The effects of pre-mediation caucuses depended on their purpose. When used to establish trust and build a relationship with the parties, pre-mediation caucuses increased settlement and reduced disputants' post-mediation conflict. But when used to get the parties to accept settlement proposals, pre-mediation caucuses either had no effect or had a negative effect on settlement and post-mediation conflict. Thus, pre-mediation caucuses with a focus on building trust have the potential for positive effects, but those with a focus on substantive proposals have the potential for negative effects.

Using Caucuses During Mediation

Caucuses generally increased settlement in labor-management disputes but had no effect on settlement in other types of disputes, regardless of whether the goal was to establish trust or discuss settlement proposals. Caucusing also was not related to disputants' joint goal achievement, the personalization of mediated agreements, or whether disputants reached a consent order or filed post-mediation adversarial motions, but disputants who spent more time in caucus were more likely to return to court to file an enforcement action. Caucusing generally either had no effect or had a negative effect on disputants' perceptions and post-mediation conflict. Thus, caucuses during mediation appear to have the potential to increase settlement in the labor-management context but have the potential for negative effects on disputants' relationships and perceptions more broadly.

Overall Conclusions

Across the studies reviewed, none of the categories of mediator actions was found to have consistent effects on any of the three sets of mediation outcomes, some actions had different effects on settlement than on disputants' relationships and perceptions of mediation,⁵ and a considerable proportion of studies reported no effects. Accordingly, the research does not permit clear conclusions that certain mediator actions will enhance mediation outcomes while others will have detrimental effects.

Looking at the relative potential for positive versus negative effects, while bearing in mind the substantial likelihood of no effects, the following mediator actions appear to have a greater *potential* for positive effects than negative effects on *both* settlement and related outcomes *and* disputants' relationships and perceptions of mediation:

- Eliciting disputants' suggestions or solutions
- Giving more attention to disputants' emotions, relationship, and sources of conflict
- Working to build trust and rapport, expressing empathy or praising the disputants, and structuring the agenda
- Using pre-mediation caucuses focused on establishing trust

Some of the above actions, however, have been examined in only a relatively small number of studies and in only a subset of dispute types, primarily divorce, limited jurisdiction, community, and labor disputes.

The potential effects of other mediator actions appear more mixed. Recommending a particular settlement, suggesting settlement options, and offering evaluations or opinions have the potential for positive effects on settlement and on attorneys' perceptions of mediation, but these actions have the potential for negative as well as positive effects on disputants' relationships and perceptions of mediation. Both caucusing during mediation and pressing or directive actions have the potential to increase settlement and related outcomes, especially in labor-management disputes, but pressing actions also have the potential for negative effects on settlement. And both sets of actions have the potential for negative effects on disputants' perceptions and relationships.

This variation in findings across studies and across sets of outcomes demonstrates that drawing conclusions about the effectiveness of mediator actions based on the findings of a single study or on a single set of outcomes could lead to recommendations not supported by the overall pattern of research findings. The Task Force's analysis of the studies, in short, suggests that mediators and others should be cautious about broad claims about "the research" showing that any particular mediator action constitutes "best practice."

⁵ Too few studies examined the effect of mediator actions on attorneys' perceptions to compare them to the other outcomes.

Proposed Next Steps and Recommendations

To further the development of a reliable empirical understanding of the effects of mediator actions as well as the creation of links between researchers and the broader mediation community, the Task Force Report lists six proposed steps along with specific recommendations to guide their implementation. The Task Force recommends that two collaborative bodies be established to oversee and implement these steps: a working group under the auspices of the ABA Dispute Resolution Section and a university consortium of mediation researchers. The Section recently created a small group to develop potential mechanisms for following up on these recommendations.

Some of the proposed steps aim at expanding and refining the field's understanding of the effects of mediator actions using existing research, such as by examining a broader set of studies in mediation and other fields and by undertaking a more nuanced analysis to see how characteristics of the dispute, context, and other factors alter the effects of mediator actions. Other proposed steps involve ways to create future studies whose findings can more meaningfully be compared and aggregated, for example, by developing greater uniformity and consistency across studies in how mediator actions and mediation outcomes are defined and measured, creating more reliable and valid measures, and using more rigorous methodologies.

The Task Force Report also proposes developing and expanding links between researchers and mediation trainers, practitioners, and program administrators to create ongoing collaboration and facilitate the exchange of questions and findings. This includes encouraging greater mediator involvement in research; developing ways to improve dissemination of and access to research findings; and creating mechanisms to incorporate empirical findings into mediation practice, such as through guides for mediator training, performance assessments, quality standards, and feedback mechanisms.


Task Force members see these proposed future steps as essential for the field of mediation to be able to develop a body of empirically derived knowledge that can deepen our understanding of the effects of mediator actions and create ways to incorporate that knowledge into practice. Moving beyond anecdotes to an evidence-based approach will help us improve mediation clients' experiences and outcomes.

Roselle L. Wissler, *Director of Research of the Lodestar Dispute Resolution Center at the Sandra Day O'Connor College of Law at Arizona State University*, was the principal author of the Task Force Report. She can be reached at rwissler@asu.edu.

Gary Weiner, *a lawyer and mediator based in Northern California*, was the chair of the Task Force. He can be reached at gw49@comcast.net.

**Maryland Judiciary
Statewide Evaluation of ADR
Effectiveness of Mediator Strategies**


Alan Wiener, Esq.



Maryland Judiciary Statewide Evaluation of ADR

Multiple studies of ADR commissioned by the Maryland Judiciary


- Conducted by independent researchers from 2010 - 2016
- Overseen by the Administrative Office of the Courts, Court Operations
- Partially funded by a Grant from the State Justice Institute



**Maryland Judiciary Statewide Evaluation of ADR:
Effectiveness of Mediator Strategies**

Two of the Maryland studies examined the effectiveness of various mediator “strategies”

- District Court Day of Trial – 4 jurisdictions
 - Limited Civil Cases
 - Mediation & Settlement Conference
- Circuit Court - 3 jurisdictions
 - Custody and Visitation
 - Mediation and Facilitation



What Works in District Court Day of Trial Mediation

Effectiveness of Various Mediation Strategies on Short-Term and Long-Term Outcomes

Maryland Judiciary Statewide Evaluation of ADR

2016-2017

Maryland Judiciary Statewide Evaluation of ADR Effectiveness of Mediator Strategies

Using the findings

- Maryland ADR Research Symposium (June 2016)
- Judicial Council ADR Committee
- Providing trainings for practitioners
- Training trainers
- Incorporating into rules of court and standards of conduct

2016-2017

Maryland Judiciary Statewide Evaluation of ADR

Full reports and two-page summaries can be accessed at mdcourts.gov/courtoperations/adrprojects.html

2016-2017

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About MACRO

MACRO fulfills its mission to promote the availability, use, and quality of alternative dispute resolution (ADR) throughout Maryland by:

- collaborating with courts, ADR practitioner organizations, and other stakeholders to advance the field of conflict resolution
- providing **grants** and technical assistance to support court, community, school and universities and government ADR programs and projects
- providing training and presentations to courts, bar associations, and other organizations and groups for skill enhancement, professional growth, ethics matters, and public information and awareness
- working to improve the quality of mediation services by managing the **Maryland Program for Mediator Excellence (MPME)**
- supporting, conducting, and encouraging **research** and **evaluation** of ADR programs and processes
- raising **public awareness** of ADR and supporting the appropriate use of ADR by people and groups experiencing conflict

Learn more about **MACRO's history**.

MORE INFORMATION

- [2016 Annual Report](#)

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Statewide Evaluation of Court ADR

<http://mdcourts.gov/courtoperations/adrprojects.html>

The Maryland Judiciary commissioned independent researchers to conduct the following studies as part of its long-term commitment to build alternative dispute resolution (ADR) programs in Maryland and to provide the highest quality ADR services to Marylanders. The research was led by the Administrative Office of the Courts and funded in part by a grant from the State Justice Institute.

Alternative Dispute Resolution Landscape: An Overview of ADR in the Maryland Court System. This report provides a comprehensive snap-shot of the court-affiliated ADR programs throughout Maryland, based on interviews of Court ADR Program Managers and courthouse staff conducted from July 2010 through January 2013.

- **ADR Landscape** <http://mdcourts.gov/courtoperations/pdfs/adrlandscape.pdf>

Criminal Court - Impact of Mediation on Criminal Misdemeanor Cases. This study examined the effect in terms of cost to the court system for cases which are referred to mediation compared to cases which are not referred to mediation. It also explores the effect on the participants regarding how the situation has worked out for them.

- **Criminal Court Two-Page Summary** <http://mdcourts.gov/courtoperations/pdfs/criminalcourtimpacttwopagesummary.pdf>
- **Criminal Court Full Report** <http://mdcourts.gov/courtoperations/pdfs/criminalcourtimpactreport.pdf>

District Court Comparison - Impact of ADR on Responsibility, Empowerment, and Resolution. This study compared the attitudes and changes in attitudes of District Court litigants who went through ADR to an equivalent comparison group who went through the standard court process

- **District Court Comparison Two-Page Summary** <http://mdcourts.gov/courtoperations/pdfs/districtcourtcomparisontwopagesummary.pdf>
- **District Court Comparison Full Report** <http://mdcourts.gov/courtoperations/pdfs/districtcourtcomparisonfullreport.pdf>

District Court Strategies - What Works in District Court Day of Trial Mediation. This study examined the effect of mediator strategies (i.e. techniques) and program factors on case outcomes in day of trial mediations in the Maryland District Court.

- **District Court Strategies Two-Page Summary** <http://mdcourts.gov/courtoperations/pdfs/districtcourtstrategiestwopagesummary.pdf>
- **District Court Strategies Full Report** <http://mdcourts.gov/courtoperations/pdfs/districtcourtstrategiesfullreport.pdf>

Family - Effectiveness of Mediator Strategies in Custody Mediation. This study examined the effect of mediator strategies (i.e. techniques) in child custody cases in three Maryland circuit courts.

- **Family Two-Page Summary** <http://mdcourts.gov/courtoperations/pdfs/familytwopagesummary.pdf>
- **Family Full Report** <http://mdcourts.gov/courtoperations/pdfs/familyfullreport.pdf>

Collaborative Law: The Current and Prospective Use of Collaborative Law in Maryland. This report examines the emerging field of collaborative law and its use in Maryland.

- **The Current and Prospective Use of Collaborative Law in Maryland** (September 2013) <http://mdcourts.gov/courtoperations/pdfs/collaborativelawreport2013.pdf>

Maryland Judiciary Statewide Evaluation of Alternative Dispute Resolution

What Works in District Court Day of Trial Mediation: Effectiveness of Various Mediation Strategies on Short-Term and Long-Term Outcomes

Maryland court rules permit judges to order or refer civil cases in the District Court to mediation or a settlement conference. This study identifies the mediator strategies and program factors affecting case outcomes. 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.**

Reflect

Reflecting Strategies:

- Reflecting emotions & interests



SHORT TERM: Reflecting strategies are positively associated with participants reporting:

- that the other person took responsibility and apologized
- an increase in self-efficacy (belief in one's ability to talk and make a difference)
- an increase from before ADR to after ADR in their sense that the court cares

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

Elicit

Eliciting Strategies:

- Asking participants to suggest solutions
- Summarizing solutions that have been offered
- Asking participants how those solutions might work for them



SHORT TERM: Eliciting participant solutions was positively associated with participants reporting that:

- they listened & understood each other & jointly controlled the outcome
- the other person took responsibility and apologized

Eliciting was positively associated with reaching an agreement in ADR.

Eliciting participant solutions was negatively associated with participants reporting ADR practitioner:

- controlled the outcome
- pressured them into solutions and prevented issues from coming out

LONG TERM: Participants were more likely to report a change in their approach to conflict and were less likely to return to court for an enforcement action.

Offering / Tell

Offering Strategies:

- Offering opinions
- Advocating for their own solutions
- Offering legal analysis
(long term only)



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

LONG TERM: The more offering strategies are used, the less participants report:

- The outcome was working
- They were satisfied with the outcome
- They would recommend ADR
- They changed their approach to conflict

Caucus

Caucusing is the practice of meeting with the participants on each side of the case separately and privately.

SHORT TERM:

The greater the percentage of time participants spend in caucus, the *more likely* participants report:

- the ADR practitioner: controlled the outcome, pressured them into solutions, and prevented issues from coming out.
- an increase in a sense of powerlessness, an increase in the belief that conflict is negative, and an increase in the desire to better understand the other participant.

The greater the percentage of time in caucus, the *less likely* the participants report:

- they were satisfied with the process and outcome, and the issues were resolved with a fair and implementable outcome.

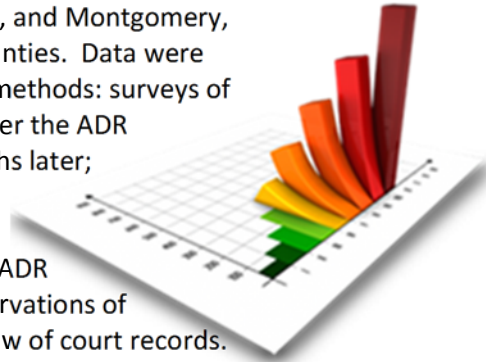
LONG TERM: The greater the percentage of time participants spend in caucus, the *less likely* participants report:

- consideration of the other person,
- self-efficacy (belief in one's ability to talk and make a difference), and
- a sense that the court cares about resolving conflict from before the ADR session to several months later.

Long-term analysis finds that greater the percentage of time participants spend in caucus, the more likely the case will return to court in the 12 months after mediation for an enforcement action.

Data Collection

Data for this study were collected in the District Court Day of Trial programs in Baltimore City, and Montgomery, Calvert, and Wicomico Counties. Data were collected through several methods: surveys of participants before and after the ADR session as well as six months later; surveys of the ADR practitioners; behavior coding of participants and ADR practitioners through observations of the ADR process; and review of court records.



Researchers were present on days when ADR practitioners were scheduled to appear for a court docket. Once the ADR practitioner received a case referral and solicited the parties' agreement to participate in ADR, researchers requested the parties consent to participate in the research study. In all four counties, pre-intervention questionnaires were given before the ADR process. Next, researchers observed the ADR process and coded the behaviors of the ADR practitioners and the participants. At the conclusion of the process, participants were escorted back to the courtroom to either record their settlement or proceed with their trial. At the conclusion of the court process, post-intervention questionnaires were given.

Three months following the ADR process, researchers called participants to conduct a follow-up interview. Finally, 12 months after the court date, researchers reviewed the electronic court records of each observed case to determine if the parties had required further intervention by the court. When the electronic record was not clear, researchers reviewed the original case file at the Clerk's office.

Analysis

This two page flier simplifies a rigorous study which used a variety of statistical tools to determine the results. A detailed discussion of the data collection instruments and analysis tools can be found in the full report; see below for more information.

Returning to Court

More likely to return to court:

Caucus: Cases in which a greater percentage of time was spent in caucus are more likely to return to court.

Less likely to return to court:

Eliciting: Cases in which ADR Practitioners used more eliciting strategies are less likely to return to court.

Mediation experience: Cases in which the ADR practitioner had greater ADR experience in the previous 12 months are less likely to return to court.

Racial Match

Having at least one ADR practitioner at the table match the race of the responding participant was **positively** associated with participants reporting that they listened and understood each other in the ADR session and jointly controlled the outcome, and an increase in a sense of self-efficacy (belief in one's ability to talk and make a difference) and an increase in the sense that the court cares from before to after the ADR session.

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.

This research, commissioned by the **Maryland Judiciary**, is part of its Statewide Evaluation of 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 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:

<http://www.mdcourts.gov/courtoperations/adrprojects.html>



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.**

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 components** 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.

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: <http://www.mdcourts.gov/courtoperations/adrprojects.html>

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.