

Research Issues and Recommendations, ABA Dispute Resolution Section Task Force on Research on Mediator Techniques

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Four Main Differences Across Studies

- How each concept was defined and measured
- The comparison group(s) used
- The source of the data (e.g., mediator report, party Qre, observation)
- Whether other factors (e.g., setting, dispute type) that could alter the effect of the action on the outcome were examined or statistically controlled

Differences across studies in any of these could, in and of themselves, produce different findings -- regardless of the actual underlying effects

How Were the Concepts Defined and Measured?

- A single action, multiple separate actions, or a composite measure(s) of an approach/style
 - Same for outcomes: single, multiple, or composite measure
- How each concept was defined/measured (operational definition)
 - The specific actions or outcomes used
 - Conceptually broad or narrow
 - Composite measures created theoretically or empirically (factors)

Concept: “Pressing” or “Directive” Actions

- Press parties, push parties hard to change positions or expectations
- Urge parties to compromise, concede, or reach agreement
- Advocate for/agree with one side’s positions/ideas; argue one side’s case; push with bias for/against one side
- Tell parties what the settlement should be; press them toward that solution; try to make parties see things their way
- Control, dominate, direct the session
- Some also included: threaten to end mediation; use frequent caucuses; express displeasure with lack of progress; criticize one party’s behavior/approach
- Some also included aspects typically used to define other approaches, e.g.: analyze strengths/weaknesses; note costs of non-agreement; make face-saving proposals; clarify parties’ needs

Concept: “Settlement” or “Resolution”

- **Dispute settled, agreement reached**
 - Was partial settlement or MOU considered “settled” or “not settled”
 - When assessed – at end of session only or include later settlements
- **Issues resolved**
 - Number or % of issues resolved
 - Whether core, underlying, or important issues resolved
- **Nature or quality of the agreement**
 - Achieve both parties’ goals or produce mutually beneficial, higher joint outcomes
 - Contain ambiguous terms
- **Durability or finality of resolution (post-mediation)**
 - Compliance with terms
 - Subsequent problems; subsequent court actions

Example: Disputant's Perceptions Used as Outcome Measures

- Fairness of and/or satisfaction with the mediation process, mediator, conduct of session
- Was the mediator respectful; listened; did not take sides; understood them or the issues/concerns
- Were the parties able to tell their views/express themselves; could they discuss underlying issues/important topics; did they listen to each other; did they discuss a range of options
- Did they gain a better understanding -- of each other, what they wanted, the issues
- Did they predict improved interactions, relationship, working together better
- Assessments of the agreement: fair, implementable, met their needs, resolved issues, were satisfied with it
- Would they use mediation again, recommend it to others
- Assessed later: Was the agreement working, had their interactions with the other party improved, how were the kids doing

What Was the Comparison Group: What Action Was “Pressing” Compared To?

- Compared the opposite ends of a scale – e.g., no/little vs. high pressure
- Compared to “non-pressing” actions -- but which actions?
 - vs. “evaluative” and “neutral” styles
 - vs. “facilitative” and “referee” styles
 - vs. “integrative” style

So even if “pressing” was measured the same way, the use of different comparison groups could produce different results

What Was the Data Source?

- Mediator actions
 - Mediator report, party report
 - Observation by researcher
- Outcomes
 - Mediator report, party/attorney report
 - Researcher assessment

Even if two studies defined the action the same way and used the same comparison groups, if they obtained those measures from different data sources, they could potentially get different results.

Were the Effects of Other Factors Examined or Statistically Controlled?

Dispute or contextual factors could alter an action's effect or could be the underlying cause of the action's apparent effect

- Found no overall effect of “pressing” on settlement; “pressing” had different effects at different levels of other factors, e.g., hostility:
 - Low hostility: “pressing” was associated with fewer settlements
 - High hostility: “pressing” was associated with more settlements
- Or a factor might affect both the action and the outcome - e.g., if greater caucus use was associated with fewer settlements
 - Hostility might both increase caucus use & decrease settlement, so that caucusing per se has no independent effect on settlement

Different Terminology and Methods Are Not Necessarily Problematic

- When multiple studies report the same findings, despite differences in definitions, measures, and methods -
 - Increases confidence that the reported effects are due to the underlying phenomenon and not how it was studied
- But when findings differ across studies that used different definitions, measures, and methods –
 - Could be due to the differences in research design

Three Recommendations from the Task Force

- Develop common terminology, definitions, and measures for a core set of concepts
- Conduct research on the best way to study important concepts
 - Develop reliable & valid measures, data sources
- Identify important contextual factors (e.g., dispute, setting, timing) that could alter the effects