Fairness, Understanding, and Satisfaction: Impact of Mediator and Participant Race and Gender on Participants’ Perception of Mediation

LOREG CHARKOUDIAN
ELLEN KABCENELL WAYNE

This empirical study explores the effects of matching mediators and mediation participants by gender and by racial or ethnic identity group. It considers both the effect on a participant of being present in a mediation session where there is no mediator of the same gender or racial/ethnic group and the effect of being present when there is also a mediator who matches the gender or race/ethnicity of the other participant. The results show that failing to match disputants and mediators by gender has negative effects on mediation satisfaction measures and that those effects increase when the mediator’s gender also matches that of the other participant. In contrast, failure to match by racial or ethnic group has little effect, but when an unmatched participant faces both an opposing participant and a mediator who share a racial or ethnic identification, mediation satisfaction decreases in several respects.

Mediation programs, particularly those deriving from “popular justice” (Merry and Milner, 1993), “community justice” (Harrington and Merry, 1988), or “community empowerment” (Charkoudian, 2006) models, seek mediators who come from and reflect the composition of the community they serve (Merry, 1993). The practice is based on the idea that diversity will help participants feel connected to mediators, on the value of seeing that “everyone in the community is a potential mediator and everyone in the community is a potential mediation participant” (Charkoudian, 2006).

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2006, p. 12), and on the concept that mediation can help those in the community resolve their own conflict constructively and thereby empower the community as a whole (Hedeen, 2003). Valuing diversity within the mediation process is also intended to help participants perceive the process as more responsive to their needs than the legal system, which does not consider personal characteristics (Shonholtz, 1993).

Many community mediation programs also use co-mediation or panel models (Hedeen, 2004), attempting to assign mediators in a way that reflects mediation participants’ social and demographic characteristics (DuBow and McEwen, 1993; McGillis, 1997). Relatively little research has examined the effect on the mediation process of mediators’ demographic characteristics or of matching mediator and participant characteristics.

This study examines the impact that matching mediators’ and participants’ gender and racial/ethnic background has on participants’ perception of the mediation process, holding constant for actual mediator activities. It is also the first study to specifically consider the effect on a mediation participant when the mediation does not include a mediator of the same gender or race/ethnicity but does include a mediator who matches the gender or race/ethnicity of the opposing participant.

**Effect of Gender and Racial/Ethnic Background on Behavior in Conflict and Mediation**

Individual differences such as gender and culture affect how people understand and engage in conflict and conflict resolution. Considering the effect of gender and racial/ethnic differences during mediation must therefore be grounded in research about group differences in conflict behavior prior to considering research related to mediation itself. This literature review will therefore examine the following, with regard both to gender and to racial and ethnic group identity: differences in conflict behavior, differences in mediator behavior, and differences in the participants’ perception of the mediation process when the mediator’s demographic identification does and does not match their own.

**Gender**

Mediation practitioners and theorists have long posited that the mediator’s gender would likely have an impact on perceptions of neutrality and
impartiality in mediation. Yet the existence and strength of this impact, if any, has not been thoroughly investigated nor understood.

**Conflict Behavior.** Research on gender differences in conflict behavior reaches inconsistent conclusions. Many writers have found that male and female conflict behavior tends to differ according to how women and men are socialized and by gender roles (Gilligan, 1982; Keashly, 1994; Eagly and Crowley, 1986). Female gender role norms encourage women to be more caring and empathic (Eagly and Crowley, 1986), concerned about relations with others (Pines, Gat, and Tal, 2002), and cooperative (Stockard, van de Kragt, and Dodge, 1988) than men (Eagly and Crowley, 1986). Male gender role norms encourage men to be more task-oriented and competitive than women (Yamada, Tjosvold, and Draguns, 1983) and to be more concerned with rules than with relationships (Pines, Gat, and Tal, 2002).

Tannen (1990) contended that women and men use fundamentally different conversational styles because gendered socialization causes them to have differing worldviews. Men communicate to establish independence, women to establish intimacy. As listeners, women are more engaged with the speaker and men more focused on the message. Consistent with these views, a study of Israeli couples in divorce mediation found that although they had the identical goal of obtaining a more favorable financial agreement, men and women tended to use different types of arguments (Pines, Gat, and Tal, 2002). Men's arguments were likely to be unemotional and legalistic; women's arguments were emotional and relational.

In contrast, other studies have concluded that differences in male and female conflict behavior are minor, limited to particular situations, or affected more by other factors than by gender (Baxter and Shepherd, 1978; Keashly, 1994; Ruble and Schneer, 1994; Stockard, van de Kragt, and Dodge, 1988; Watson, 1994).

Studies on gender stereotyping, however, suggest that actual behavioral difference may matter less than perceptions of difference. Rose (1995) explained, “As I worked through the subject [of gender differences in conflict styles], it seemed that women’s actual taste for cooperation—if such a taste exists—is much less important than something else: people think women are likely to be cooperative types” (p. 549). These gendered expectations influence people’s perception of their own behavior and their expectations of the behavior of others. Stockard, van de Kragt, and Dodge (1988) found that when women and men responded similarly to conditions
promoting cooperative or competitive behavior, women were more likely to see themselves as “altruistic, principled, and oriented toward group relations” (p. 161). This perception suggests that women view their behavior as consistent with a societal expectation of cooperation. In addition, when female and male conflict behavior is the same, people who behave contrary to “gender type” (for example, competitive women or accommodating men) are judged more negatively than those whose behavior aligns with gender expectations (Folger, Poole, and Stutman, 2005; Korabik, Baril, and Watson, 1993).

**Mediator Behavior.** Male and female mediators differ in how they see their mediation roles and in how they act as mediators. Women are more likely to see their role in mediation as facilitating either communication alone or both communication and the mediation process; men see their role more as facilitating the process (Picard, 2002). Women tend to focus on understanding the parties, their differences, and their emotions, men on solving the problem presented and seeking agreement (Herrman, Hollett, Eaker, and Gale, 2003; Weingarten and Douvan, 1985).

Consistent with these differing views of mediator roles, male and female mediators tend to communicate for different purposes during mediation. They use about the same number of “formulations”—communications that paraphrase, summarize, and reframe—but use them differently. Female mediators use more formulations for clarification, to ensure accurate understanding of participants’ statements, and to identify areas of agreement and disagreement; male mediators use formulations that help them control the mediation process (Wall and Dewhurst, 1991; Dewhurst and Wall, 1994). Male mediators are also more likely to use tactics to alter the parties’ positions or expectations and to make suggestions than are female mediators (Carnevale, Lim, and McLaughlin, 1989). These differences appear rooted in societal gender roles, as male college students without mediation training used more forceful tactics in “settling” a simulated dispute, reported greater influence over the participants, and were more confident in their mediation ability than female students (Carnevale, Donlon, Hanisch, and Harris, 1989).

Female mediators thus are more likely to behave consistently with what Kolb and Associates (1994) call an “enhanced communication” frame, viewing the aim of mediation as facilitating the parties’ communication and helping them to develop improved understanding of their situation. Male mediators are more likely to behave consistently with a settlement
frame, the primary focus of which is to get the parties to reach an agreement. Here again, however, the findings are inconsistent. Dingwall, Greatbatch, and Ruggerone (1998), using conversation analysis, found no difference in the interaction of male and female mediators with divorce disputants.

Mediation participants’ perceptions of male and female mediator behavior also differ from the mediators’ actual behavior. Participants in one study perceived male mediators as more controlling than female mediators, even though the women were either as controlling as or more controlling than the men (Burrell, Donohue, and Allen, 1988). Participants expect mediators to behave consistently with gender roles, and those expectations affect perception.

Most studies show no relationship between mediator gender and measures of mediation success such as settlement rate, participants’ perception of the fairness of mediation, and satisfaction with the mediation process or outcome (Alberts, Heisterkamp, and McPhee, 2005; Carnevale, Lim, and McLaughlin, 1989; Wissler, 2006). One study of misdemeanor cases showed no difference in the extent to which mediation cases involving male and female mediators reached agreement, but the agreements in cases involving female mediators were more likely to remain in effect on later follow-up than those involving male mediators (Maxwell, 1992). In contrast, a study of small-claims mediation found that participants were most likely to reach agreement with two female mediators and least likely with two male mediators (Hermann, LaFree, Rack, and West, 1993).

**Interaction Between Mediator and Participant Gender.** When the mediator and both participants shared the same gender (whether female or male), mediators used more formulations to communicate than they did when the mediator and both participants were of differing gender (Wall and Dewhurst, 1991). Despite this contrast in communication, the relationship between mediator and participant gender did not affect participants’ satisfaction with the mediation process, its outcome, or the mediator’s ability and fairness. Wall and Dewhurst opined, “Perhaps it is simply easier for each gender to talk with members of the same sex than it is with members of the opposite sex” (p. 82). In another study, however, female claimants in small-claims mediation handled by two female co-mediators were less satisfied with the mediation process and its fairness, but respondents in the same cases were somewhat more likely to be satisfied with the outcome (Hermann, LaFree, Rack, and West, 1993).
Gender Hypotheses. Despite some inconsistency, most research on gender and mediation suggests that female and male behavior and communication as parties in conflict and as mediators tends either to differ or to be perceived as different. Female mediation participants are therefore likely to be less comfortable with their customary conflict behaviors and communication forms in mediation without a female mediator present, and male mediation participants are likely to be less comfortable in the same ways without a male mediator. Participants should feel less able to express themselves and less readily understood if no mediator of the same gender is present.

In addition, research on gender roles and gender stereotypes suggests that women and men in conflict perceive themselves and mediators as behaving in ways consistent with societal gender roles. Because of these perceptions, mediation participants are apt to perceive mediators of the other gender as embodying and behaving consistently with gender roles and views different from their own and therefore be more likely to feel judged if no mediator of their gender is present. Further, because of the relative familiarity or comfort of the communication process found when a mediator who shares the participant’s gender is present, the participant will also be likely to feel greater control of the conflict situation after the mediation than she or he did before it. The participant will also have a more positive experience with addressing conflict and therefore be more optimistic that conflict can usually be dealt with productively.

In contrast, research shows little difference in perceived mediator fairness or satisfaction with the mediation process on the basis of mediator gender or gender match. Having a gender match with a mediator is therefore unlikely to affect participants’ judgments in those areas.

To determine the effects of mediator-participant gender matches and to account for the fact that some of the mediations in the study were co-mediated—providing two potential gender matches for each participant—this study considered three conditions. The first is a gender match, a situation in which the participant whose views are being measured and at least one mediator share the same gender. The second condition, no gender match, exists when there is no mediator present who shares the participant’s gender. The third condition, other gender match only, considers the subset of the no gender match participants whose mediator or mediators share the gender of the other participant.

No gender match participants face a mediation situation facilitated by one or two other-gender mediators. The communication style and mediation behavior of those mediator(s) are likely to be, or be perceived as, different
from those of the participant, which will make the participant feel less able to communicate effectively during the mediation process than a gender match participant would be. In addition, the other-gender mediator(s) will not share or be perceived as sharing a conflict or communication style with the participant. As a result, the participant will be more likely (than a gender match participant) to feel that the mediator is judging the participant’s ideas. The no gender match participant is also likely to feel decreasing control of the conflict situation as the mediation progresses.

Other gender match only participants also have no gender match, so they share the experiences described above. At the same time, they are likely to see the mediator(s) as reflecting the gendered communications, behaviors, and expectations of the other participant. The effects of having no gender match should be independent of whether the mediator’s gender matches that of the other participant, but those effects should be exacerbated when the participant is, essentially, left out in the face of an opposing participant and mediator(s) who appear to share the same gendered communications and behavior.

This study will therefore test a series of hypotheses with regard to participants who have no gender match as well as the subgroup who also have an other gender match only. For each situation in which it is predicted that no gender match participants’ mediation experience will differ from that of gender match participants, this study also hypothesizes that the experiences of the other gender match only group will differ more substantially in these respects:

**H1:** These participants will be less likely than gender match participants to engage in effective communication (speaking freely and feeling heard) during the mediation.

**H2:** These participants will be less likely than gender match participants to feel that the mediator listened without judging their ideas.

**H3:** These participants will feel that their control of the conflict situation decreased from the beginning to the end of the mediation.

**H4:** These participants will be less likely than gender match participants to feel that conflict can generally be dealt with productively.

**H5:** These participants will be just as likely as gender match participants to believe that the mediator was biased.
H6: These participants will be just as satisfied with the mediation process as gender match participants.

Racial and Ethnic Background

For purposes of this article, an individual’s “racial and ethnic background” is the demographic group that the person selects from a list of options. These demographic categorizations are often used as proxies for identification with a particular group or for cultural differences that may influence conflict and mediation behavior. They thus may serve as “part of an assertion about collective social identity and group difference” (Avruch, 2003b, p. 357).

Culture affects both how conflict is pursued and how it can be addressed. It influences people’s values, beliefs, and understandings and “frames the context in which conflict occurs” by creating the mental and emotional structures through which people understand their actions and those of others in the conflict (Avruch, 2003a, p. 143). A particular “cultural framework consists of ideas about when to fight and when to compromise, notions of self in relation to others, and theories about which third parties are entitled to intervene in problems and in what ways” (Merry, 1987, p. 1). "Understanding the concept of culture is a crucial prerequisite for effective conflict resolution" (Avruch, 2003a, p. 140) because “dispute resolution is . . . embedded within powerful but unarticulated cultural frameworks” (Merry, 1987, p. 3).

Culture is complex. Its effects are shared among a particular group but vary at an individual level within that group (Davidson, 2001; Savage, 1996). For example, a person who identifies as Latino but was born and socialized in the United States and attended diverse schools might be less affected by typically Latino cultural frameworks than someone who entered this country more recently. Seeing group culture as uniformly distributed creates dangers of stereotyping (Gadlin, 1994, p. 37) and “essentializing sociocultural differences through overgeneralization” (Davidheiser, 2008, p. 72). Conflict interveners therefore face the twin errors of undervaluing real cultural impacts and overestimating them (Avruch, 2003b; LeBaron, 1998).

Individuals also have multiple cultures linked to social group memberships and experiences. Socioeconomic level, region, family, generation, and occupational type, for example, have cultural implications that can partially or completely frame the context of a particular conflict. Individuals
also have personal tendencies and preferences, so it is “not at all easy to distinguish personal dispositions from social factors like group affiliation or representation” (Schruijer and Vansina, 2006, p. 330).

Conflict Behavior

An early example of research concerning differing racial conflict styles is Kochman’s ethnographic study (1981), *Black and White Styles in Conflict*. Kochman emphasized differences between the two groups. He found, for example, that the “black mode [of engaging in public debate]—that of black community people—is high-keyed: animated, interpersonal, and confrontational. The white mode—that of the middle class—is relatively low-keyed: dispassionate, impersonal, and non-challenging” (p. 18). Davidson (2001) similarly found differences in black and white approaches to interpersonal conflict in an organizational context, although he recognized that his study did not account for intragroup differences.

Other studies have presented a more nuanced picture of racial and ethnic group differences in conflict styles. These studies begin by showing broad group differences. For example, consistent with Kochman’s findings, African Americans are less likely to avoid conflict or seek third-party assistance than Asian Americans and Latino(a) Americans (Ting-Toomey and others, 2000, p. 74). The studies then continue to examine the effect of other factors on an individual’s conflict style. Such factors include the extent to which the individual identifies with his or her ethnic identity group (“ethnic identity salience”), the extent to which he or she identifies with and feels assimilated into the broader American culture (“cultural identity salience”), and the nature of his or her self-image as independent from and interdependent with others (“self-construal”) (Oetzel, 1998; Ting-Toomey and others, 2000; Ting-Toomey, Oetzel, and Yee-Jung, 2001). Ting-Toomey, Oetzel, and Yee-Jung (2001) found that self-construal explains conflict styles better than ethnic background for African Americans, Asian Americans, Latino Americans, and white (European) Americans, demonstrating the limitations of making broad generalizations about conflict behavior solely on the basis of demographic identification.

Mediator Behavior

There is little research into the effects of mediators’ racial or ethnic identification on their behavior in mediation that has examined mediators within a single country. One such study showed that white (European)
American and Asian American mediators in a neighborhood justice center had no differences in conflict-handling styles or in the extent of their identification with the mediator role (Goldstein, 1998). Similarly, Israeli mediators with varying cultural backgrounds did not behave differently in mediation, a finding attributed to the length of time the mediators had lived in Israeli society (Zaranken and Wall, 2007). By contrast, in Gambia mediators from different social or ethnolinguistic groups showed varying mediation behaviors and attitudes, but also significant intragroup differences and a “startlingly high number of factors associated with individuals’ mediation preferences and styles” (Davidheiser, 2008, p. 70).

Interaction Between Mediator and Participant Racial/Ethnic Group. Matching mediators and mediation participants by racial or ethnic group presents problems. First, the matching process generally uses a common demographic (racial or ethnic) group membership, relying on the false assumption that group identification is the same as common culture and worldview. The use of matching thus directly raises the tension between necessary cultural awareness and harmful oversimplification of intragroup cultural diversity, “especially when it is done crudely, based solely on a single identity marker” (Davidheiser, 2008, p. 73). Second, matching assumes that mediators and participants who share a racial or ethnic group can create a more effective mediation relationship.

The few studies that have considered the effectiveness of racial/ethnic matching offer little support for the practice. Two studies, one from Canada and the other from Australia, raised concerns about matching based on ethnic group identification (Fisher and Long, 1991; Viswanathan and Ptak, 1999). Both noted that such matching could be less valuable than matching mediators and participants on other common characteristics, such as age or gender. In each case, some mediation participants requested assignment of a mediator who was a member of another group, thereby rejecting the concept of commonality based on demographic group matches. Furthermore, in the Australian study, cases with participant-mediator matches based on ethnicity, immigrant experience, or language were less likely to result in agreement than cases without them (Fisher and Long, 1991).

A study of small-claims cases in New Mexico presents a contrast but is difficult to apply to other circumstances. It found that minority claimants (most of whom were Latino or Latina) received lower monetary payment than Anglo claimants when one or both of their mediators were Anglo, but not when both mediators were of a minority (Hermann, LaFree, Rack, and
Despite obtaining less money than similarly situated Anglos, however, minority participants were more satisfied than Anglo participants with the mediation process.

LaFree and Rack (1996) offer three potential explanations for these differences. One of them relates to matching: Anglo mediators appeared to treat minority and Anglo claimants differently. For example, they tended to assume that Anglo claimants would not negotiate monetary claims but that minority claimants might accept nonmonetary compensation or less money. In addition, regardless of their ethnicity respondents appear to have been biased in that they were more willing to accept the monetary claims of Anglo claimants than of minority claimants. Finally, minority claimants were less likely to focus on monetary goals than white claimants and were more likely to be satisfied with nonmonetary settlements.

The relationship between mediator ethnicity and minority mediation outcomes in the New Mexico results is therefore limited to claimants’ monetary outcomes and negatively affects minority claimants if one Anglo mediator is involved, even if there is a second, minority mediator present. The results do not relate directly to usual mediator-participant matching practices, which attempt to match a participant with at least one mediator, or to nonmonetary measures of mediation success.

The limited prior research thus fails to support the expectation that matching mediators and mediation participants by racial or ethnic group will change the mediation experience in any significant way. With regard to both the no race match and the other race match only conditions, this study tests the hypothesis that a participant’s mediation experience will be the same as that of a race match participant in each of the respects considered with regard to gender in Hypotheses 1 through 6 above.

The Study

The goal of this study was to determine whether there are differences in participants’ perceptions of their mediation experience depending on the relationship between participants’ and mediators’ gender or racial/ethnic backgrounds. The study adds significantly to previous research because there has been little exploration of the effects of either type of matching. It also uses dependent variables that extend beyond those typically considered, looking not only at satisfaction with the mediation process but also at whether participants felt they could express themselves and had been
understood in mediation and whether they perceived the mediator as neutral. In addition, the study controls for case characteristics and observed variations in mediator strategies.

Methodology

The database for this study was developed as part of a larger study coordinated by Community Mediation Maryland, formerly the Maryland Association of Community Mediation Centers (MACMC). Community mediation programs in Maryland, Pennsylvania, Delaware, New York, Washington, D.C., Northern Virginia, and New York participated in the research along with a mediation program in a Maryland prosecutor’s office. In each program, intake staff asked mediation clients whether they were willing to have researchers present during their sessions. Participants in seventy cases agreed. In each case, researchers interviewed the mediation participants immediately before and immediately after their mediation sessions, using a survey questionnaire that asked about the participants’ experience with the conflict, beliefs about conflict, experiences with the mediation, and demographics. Mediators also completed a brief questionnaire before the mediation began, providing demographic information and responding to questions about their philosophy and approach to mediation. Researchers attended all mediation sessions and observed and coded behavior, as described in more detail below.

Mediations in the study involved interpersonal conflict, including neighbor disputes, family disputes, and small business disputes. Matters were referred to mediation from a number of sources. Some matters involved situations in which misdemeanor criminal charges or small-claims civil charges had been filed.

Most of the mediators were volunteers in community or court programs; a few were paid staff of these programs. The mediators reported a broad range of experience, having previously mediated between two and ninety-five hundred cases each. Their initial mediation training ranged from 16 to 135 hours and advanced training ranged from 22 to 660 hours. The programs assigned mediators to cases in different ways; the authors do not have access to information about how those assignments were made. Fifty-five percent of the participants included in the database participated in sessions that were co-mediated.

Most cases completed mediation in one session, but some had a second session. Mediations lasted between forty minutes and more than four hours, with a mean length of just under two hours. Almost all mediation
time was spent in joint session. Separate private sessions with the participants on each side of the dispute were held in only nine cases; even in these cases, the majority of the mediation occurred in joint session.

The Demographic Match Variables

The entries in the database all include one participant’s answers to the survey questions (the dependent variables) and information on whether that participant had a gender or racial/ethnic group match with the mediator, or with either of the mediators if the case was co-mediated. As described above, the study explored these issues from two perspectives. First, it considered whether there was a gender or racial/ethnic group match between the participant in question and any mediator present. If there was no such match, the participant was coded for no gender match or no race match. Second, if there was no participant-mediator match with regard to gender or race/ethnicity, the study considered whether the mediator’s gender or racial/ethnic background matched that of the other participant—a variable labeled other gender match only or other race match only. These variables were created in order to test the effect on a participant’s view of mediation when no mediator was present whose identity matched the participant’s own, and in those cases whether there were further effects when at least one mediator had an identity that matched the other participant (making the initial participant, in effect, isolated or outnumbered).

Case Variables

Four variables related to the particular case were included in the analyses as control variables. First, the variable mediator gender was included in light of the research concluding that women and men mediate or are perceived as mediating differently. Using this variable made it possible to hold constant for gender, ensuring that actual mediator gender effects did not appear as results related to the presence or absence of a gender match. Mediator gender is a straightforward variable (1 = female, 0 = male) when there is a single mediator or two mediators of the same gender. In cases where one male and one female co-mediated, the mediator gender variable was set between 0 and 1 according to the percentage of coded behavior by each mediator in the mediation. The mediator gender variable therefore measured the extent of “female mediating” or “male mediating.”

Two variables controlled for the extent of escalation before the case entered mediation, a factor that can limit effectiveness (Kressel and Pruitt, 1989; Zubek and others, 1992). Authority indicated cases that had escalated to the
point where the police were called or charges were filed in court prior to mediation. How long—months indicated the conflict duration, in months, prior to the mediation session. Conflict with a longer duration prior to mediation is less likely to result in an agreement and less likely to have participants who are satisfied with mediation (Pearson and Thoennes, 1989).

Finally, agreement indicated whether the parties reached and signed an agreement at the end of the mediation. The ability to reach agreement can relate to other measures, including satisfaction with how the mediation is conducted (Zubek and others, 1992).

**Mediator Behavior Variables**

A series of variables related to mediator behavior were also included as controls in the analysis. Direct observation of mediator behavior in this research furnishes an unusual amount of data on what mediators actually do. Including this data allows a focus on the impact of the gender and racial/ethnic matches between mediators and participants while controlling for mediator behaviors that might affect participants’ mediation experiences.

The lead researcher developed the behavior codes for the study in conjunction with experienced mediators and mediation researchers. The codes were taught to research assistants who practiced coding mediator behavior using videotaped mediation role plays. Only those behaviors that the research assistant and the lead researcher could code in practice at a substantial interrater reliability level of $\kappa = 0.75$ or above (Suen and Ary, 1989; Landis and Koch, 1977) were used in observations of actual mediation sessions for the study. During each mediation session, one research assistant coded all mediator activities, entering codes into a handheld computer as the mediation progressed. A mediator activity was coded each time it appeared in a new speaking turn. If a speaking turn lasted more than thirty seconds and the subject engaged in the behavior coded in the previous thirty-second period, the behavior was coded again.

For this analysis, the codes were put into groups that combined similar types of mediator behavior to measure and control for the mediator strategies used in each case. **Listening** includes mediators’ use of reflective listening and open-ended questions, mediator strategies focused on encouraging participants to openly communicate their concerns, affirming that participants’ statements have been heard accurately, or clarifying the communication. **Explaining** includes mediator strategies in which the mediator attempted to build understanding or to shift the perspective of one or both participants by explaining one participant to another or advocating for...
a participant’s positions or ideas. In other words, these are strategies where the mediator took a more active role as a go-between in the participants’ communication. Directive includes the more directive strategies a mediator might use, such as giving opinions or suggestions, encouraging adoption of a particular solution, or telling participants how to behave during the mediation.

**Dependent Variables**

Dependent variables were developed from participant surveys for use in measuring constructs that are indicators of success in mediation or in development of constructive attitudes toward conflict. Some of the survey items measured the participant’s experience of the mediator: “mediator listened without judging” (Kelly and Gigy, 1989), “mediator understood” (Pearson and Thoennes, 1989), “mediator took sides” (Wall and Dewhurst, 1991). Other items measured participants’ experience of the process, including having an active voice (“I could express myself”; Gale, Mowery, Herrman, and Hollett, 2002; Herrman, Hollett, and Gale, 2006; Pearson and Thoennes, 1989) and process satisfaction (“satisfied with process”; Herrman, Hollett, and Gale, 2006; Pearson and Thoennes, 1989; Zubek and others, 1992). Because two of these items (“I could express myself” and “Mediator understood what I was expressing”) measured the ability to speak and the feeling of being heard, their responses were averaged to create a single variable, effective communication. Two survey items asked both before and after the mediation measured changes in participants’ views as a result of the mediation experience: empowerment (“feel no control”; Bush and Folger, 2005; Nabatchi and Bingham, 2001) and belief in positive aspects of conflict (“conflict can usually be handled productively”; Deutsch, 2000).

Table 1 lists the variables used as well as their descriptions and summary statistics.

**Equations**

Two sets of linear regression equations were estimated for each dependent variable. The first used the independent variables no gender match and no race match to measure the impact of not having a match, regardless of whether there was a match with the other participant. The second equation used other gender match only and other race match only to measure the impact when the responding participant had no match but there was a match with the other participant. Each equation also includes the variables how long–months and authority to control for the length and escalation of
<table>
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<th>Description</th>
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</tr>
<tr>
<td>Mediator strategies</td>
<td>Number of times mediators summarize, reflect, or ask open-ended questions</td>
<td>41.85</td>
<td>22.72</td>
<td>9</td>
<td>114</td>
</tr>
<tr>
<td>Explaining</td>
<td>Number of times mediators explain one participant's position to the other or advocate for or support what a participant has expressed</td>
<td>3.60</td>
<td>4.43</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>Directive</td>
<td>Number of times mediators express an opinion, tell participants how to behave, make a suggestion, or advocate for the mediators’ own solution</td>
<td>17.79</td>
<td>19.33</td>
<td>0</td>
<td>82</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Dependent variables</td>
<td>Note: use 5-point Likert scales</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective communication</td>
<td>Average of responses from 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”</td>
<td>4.32</td>
<td>0.57</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Mediator listened without judging</td>
<td>The mediators listened to what I had to say without judging me or my ideas</td>
<td>4.59</td>
<td>0.59</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Mediator took sides</td>
<td>The mediators seemed to take sides</td>
<td>1.67</td>
<td>0.64</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Satisfied with process</td>
<td>How satisfied are you with the way the mediation was conducted?</td>
<td>4.35</td>
<td>0.70</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Difference variables</td>
<td>Note: calculation = premediation answer – postmediation answer</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Feel no control</td>
<td>I feel like I have no control over this situation</td>
<td>Increased control (+)</td>
<td>0.43</td>
<td>1.28</td>
<td>-3</td>
</tr>
<tr>
<td>Conflict can usually be handled</td>
<td>Conflict can usually be dealt with productively</td>
<td>Increased hope for productive conflict (−)</td>
<td>-0.07</td>
<td>0.64</td>
<td>-2</td>
</tr>
</tbody>
</table>
the conflict, and the variable agreement to control for whether or not the case resulted in an agreement, which can affect perception of the process.

Finally, each equation included a variable measuring mediator behaviors during the mediation. Listening was estimated in the equation with mediator listened without judging, because the reflective communication measured by listening may make a participant feel that the mediator was listening. Explaining was used in the equation with mediator took sides; a mediator advocating for one participant may make another feel that there is bias. Directive was included in the equations with effective communication and feel no control because more directive strategies may have an impact on participants’ sense of freedom to express themselves. Directive was used in the equation with satisfied with process because directive mediator actions may make the process seem less fair but also increase both the likelihood of reaching a settlement and participants’ satisfaction with the mediation’s outcome (Wissler, 2006). Directive was also used in the equation with conflict can usually be handled productively in that some mediators use more directive strategies because they believe they will show participants how to handle conflict more productively.

Results

The results of estimating an ordinary least squares linear regression on the equations described above for both gender and racial/ethnic group are shown in Table 2.

Gender

As summarized in Table 3, the absence of a mediator who shares the participant’s gender (the no gender match condition) did not affect the participant’s perception that there was effective communication in the mediation (combining responses about the participants’ ability to speak expressively and the sense of being understood by the mediator). Participants in the other gender match only condition (when there was no mediator who shared the participant’s gender, but there was a mediator with the same gender as the opposing participant) were significantly less likely to feel that there was effective communication in the mediation. Thus the results show no support for Hypothesis 1 when there is no mediator match but support it when the participant feels outnumbered.

Participants in both the no gender match and the other gender match only conditions were significantly less likely to see the mediator as listening
Table 2. Results of the Estimated OLS Regressions on Postmediation Questions \((n = 103)\)

<table>
<thead>
<tr>
<th>Case variables</th>
<th>Effective Communication</th>
<th>Mediator Listened Without Judging</th>
<th>Diff: Feel No Control</th>
<th>Diff: Conflict Can Usually Be Dealt with Productively</th>
<th>Mediator Took Sides</th>
<th>Satisfied with Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority</td>
<td>0.179</td>
<td>0.151</td>
<td>0.316**</td>
<td>0.281*</td>
<td>0.187</td>
<td>0.125</td>
</tr>
<tr>
<td>How long—months</td>
<td>0.000</td>
<td>-0.000</td>
<td>-0.000</td>
<td>0.001</td>
<td>0.001</td>
<td>-0.003</td>
</tr>
<tr>
<td>Agreement</td>
<td>0.043</td>
<td>0.141</td>
<td>-0.010</td>
<td>-0.002</td>
<td>-0.334</td>
<td>-0.321</td>
</tr>
<tr>
<td>Mediator female</td>
<td>0.155</td>
<td>0.135</td>
<td>0.089</td>
<td>0.191</td>
<td>0.146</td>
<td>-0.004</td>
</tr>
<tr>
<td>Gender match</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No gender match</td>
<td>-0.209</td>
<td>-0.308**</td>
<td>-0.132</td>
<td>0.019</td>
<td>0.300**</td>
<td>-0.348**</td>
</tr>
<tr>
<td>Other gender match only</td>
<td>-0.274*</td>
<td>-0.479**</td>
<td>0.269</td>
<td>-0.039</td>
<td>0.451**</td>
<td>-0.110</td>
</tr>
<tr>
<td>Racial/ethnic match</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No race match</td>
<td>0.120</td>
<td>-0.045</td>
<td>-0.017</td>
<td>0.289*</td>
<td>0.207</td>
<td>-0.022</td>
</tr>
<tr>
<td>Other race match only</td>
<td>-0.127</td>
<td>-0.335*</td>
<td>-0.994*</td>
<td>0.256</td>
<td>0.055</td>
<td>0.004</td>
</tr>
<tr>
<td>Mediator strategies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Listening</td>
<td>0.005*</td>
<td>0.003</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explaining</td>
<td>-0.008*</td>
<td>-0.008*</td>
<td>-0.004</td>
<td>-0.006</td>
<td>-0.005</td>
<td>-0.004</td>
</tr>
<tr>
<td>Directive</td>
<td>-0.008*</td>
<td>-0.008*</td>
<td>-0.004</td>
<td>-0.006</td>
<td>-0.005</td>
<td>-0.004</td>
</tr>
</tbody>
</table>

* Statistically significant at the 0.05 level \((p < 0.05)\); ** Statistically significant at the 0.01 level \((p < 0.01)\).
without judging, but the effect was stronger for other gender match only. The results in this area are therefore consistent with Hypothesis 2 and the expectation that any gender-match effects would be exacerbated in the other gender match only condition.

Neither of the two conditions (no gender match or other gender match only) was related to a decrease in participants’ sense of control over the conflict situation over the course of the mediation or an increase in participants’ belief that conflict can usually be handled productively, contrary to Hypotheses 3 and 4.

The results showed that being in either of these two conditions was significantly related to the participants’ perception that the mediator took sides, inconsistent with Hypothesis 5 and other studies showing that gender match does not affect perceptions of mediator bias. Again, the effect was stronger for the other gender match only condition than it was for the no gender match condition. It is also noteworthy that in both regressions for mediator took sides, having a female mediator had a significant negative effect, meaning that male mediators were more likely to be perceived as taking sides than female mediators, regardless of the gender of the responding participant.

The no gender match condition was significantly related to participants having lower satisfaction with the mediation process, contrary to Hypothesis 6. The other gender match only condition was not significantly related to participants’ satisfaction with the mediation process, although the effect was in the same negative direction as seen in the no gender match condition. These seemingly inconsistent results might be influenced by the small number involved in the study.

**Race and Ethnicity**

Consistent with the predictions, mediator-participant matches based on race or ethnicity as determined by demographic group identification had

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**Table 3. Statistically Significant Gender Effects**

<table>
<thead>
<tr>
<th></th>
<th>No Gender Match</th>
<th>Other Gender Match Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective communication</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mediator listened without judging</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Increased sense of control</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hope for positive conflict resolution</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Mediator took sides</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Satisfied with process</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---
less effect on mediation experience than matches based on gender. They still had some effect, however, particularly when the mediator’s race/ethnicity matched only that of the other participant. These effects are summarized in Table 4.

Neither the condition where there was no mediator who shared the participant’s racial or ethnic group identification (no race match) nor the subset of no race match cases where a mediator shared race with the opposing participant (other race match only) was related to effective communication, the perception that the mediator took sides, or the participant’s satisfaction with the mediation process.

There was a significant effect associated with the absence of a racial/ethnic match in three areas, contrary to the hypothesis that there would be no such effects. First, in the no race match condition, there was a decrease over the course of the mediation in the participant’s feeling that conflict could usually be dealt with productively, indicating less optimism about constructive conflict management. This effect was not present in the other race match only condition. Second, when no mediator shared the participant’s racial or ethnic group but a mediator shared a match with the opposing participant (other race match only), the data showed a significant negative effect on the participant’s perception that the mediator listened without judging and on the participant’s change in sense of control of the conflict situation. These effects were not significant in the data for the no race match condition.

Discussion

These findings indicate that the impact of demographic characteristics on participant perceptions is important, but in somewhat unexpected ways.
Gender

This study supports attempts to match mediation participants and mediators by gender if possible, but on different bases than we anticipated. The strongest effects concerned perceptions relating to the mediator’s fairness. Participants who attended a mediation with no same-gender mediator present saw the mediator(s) as listening judgmentally and as taking sides in the mediation. When the participant was outnumbered in the mediation session because the mediator’s gender matched only that of the opponent, these perceived bias effects worsened. Mediation participants with no gender match were also less satisfied with the mediation process. Findings linking the absence of a participant-mediator gender match with perceived bias and lower satisfaction are particularly significant because they contradict findings from previous studies that gender match did not affect mediation participants’ satisfaction with the mediation process or the mediator’s fairness.

The results yield inconsistent support for the expectation that differences in communication and conflict styles make it difficult for a participant to have voice in the mediation and feel understood by a mediator of the opposite gender (effective communication). Participants who face an opponent and mediator(s) who share the other gender do feel that there is less effective communication in the mediation; for those who simply face a different-gender mediator, however, there is no such significant showing (though the statistically insignificant effect that exists is in the same direction). It is important to realize that if no participant shares gender with the mediator, the participants do share gender with each other. Perhaps under these circumstances, the participant feels comfortable using customary gendered conflict or communication styles in addressing the other participant in a way that offsets any discomfort with the mediator’s gender.

An important conclusion from these results is that the mediation experience is harmed in a number of respects when participants face mediators who do not share their gender. This conclusion raises significant practice implications. First, mediations involving participants of differing gender are likely to be perceived as unfair by at least one participant unless mixed-gender co-mediators are used. Same-gender participants also tended to perceive a different-gendered mediator as judging and taking sides, however, suggesting that mediation appears fairest when even these disputes are mediated by someone who shares the participants’ gender.
Race and Ethnicity

The results from this study raise concerns about mediation where the mediator’s race/ethnicity matches one participant and not the other, an issue that has received no previous attention. When participants were outnumbered in this way, they were less likely to perceive the mediator as listening without judgment and felt less control over the conflict situation at the end of the mediation than they had at the beginning. This conclusion is linked to concerns that using demographic categories oversimplifies the concept of group identification. People who belong to the same racial or ethnic group will likely be aware of the extent of intragroup diversity and therefore recognize when they have little in common with a same-group mediator. A participant who does not belong to this identity group, however, may oversimplify and see the other’s group as culturally monolithic and consistent. Facing two people linked by perceived commonalities she lacks, the participant may feel isolated in the mediation.

Aside from the situation in which a participant is isolated, the results of this study are consistent with the few previous studies showing little or no value in matching participants and mediators by racial and ethnic identity group. Failing to create a mediator-participant match had no significant effect on the unmatched participant’s mediation experience in six of the seven areas considered. The one area in which there was an effect goes beyond the immediate mediation experience: participants who did not match the mediator had decreased long-term hope that conflict can be dealt with productively. It seems strange for long-term hope to decrease on this basis when measures of the mediation experience itself were unaffected. Given the lack of other research support or a theoretical rationale for this decrease, it is possible that this finding is a chance result. Nevertheless, given the complexity of the concepts of race and ethnicity and the varying perceptions of racial and ethnic groups that apparently underlie the other race match only effects, it is also possible that decreased optimism that conflict can usually be dealt with constructively indicates a subtler and more complex interaction. Further research should explore whether this effect can be replicated and whether it is linked to other factors.

Limitations

There are two potential limitations to this research. The first is the small sample size, which limits options for analysis. The second is the possibility that the observations are not independent of one another.
The research involved observations of full mediations so that researchers could code all mediator and participant behavior and interview all participants in person before and after the mediation. This extensive data collection is labor-intensive and costly, limiting the number of cases that could be included.

The size of the dataset has two effects. First, since statistical significance increases with sample size, regression analysis of a smaller dataset may fail to find significant relationships that exist in the underlying population. The second impact is that the small dataset limits the researchers’ ability to divide the dataset into subsets. One area of interest would be whether the subject matter of the conflict affects the importance of matching. For example, gender matching might have more of an impact in cases involving males and females in a romantic or formerly romantic relationship than in neighborhood conflict. Racial matching may be particularly important in community cases, but not as important among participants in the same family. Although it would be ideal to test for such differences with subsets of the full dataset, these subsets would be too small for meaningful analysis. Future research of this type would do well to obtain sufficient funding to collect a large dataset that would allow such subdivision.

One assumption of linear regression is that observations are independent of each other. Each entry in this dataset includes demographic and questionnaire answers for a single participant, so each mediation results in at least two entries. We view these entries as independent because each measures an independent personal experience with race and gender or ethnicity. One might also argue, however, that the responses from participants in the same mediation session are reactions to an experience with the same mediator and therefore are not independent. Observations that are not independent can create a bias of estimated standard errors and associated tests, so the analysis might find statistical significance where there is none or fail to find statistical significance where it does exist in the underlying population.

The analysis conducted and reported in this article is based on the view that the observations are independent. Nevertheless, to ensure that there is no severe bias in the results, we created a new database, limited to one randomly selected participant from each mediation. The observations in this data subset should be fully independent. Estimating the same linear regression equations on this new, much smaller dataset produced results similar to those reported above. The minor differences in results can be attributed to use of a second dataset that was less than half the size of the original. This
test demonstrates that the potential limitation has no significant effect on the findings in this study.

Conclusion

Developing the ability to match mediators with disputants by gender, even if it means co-mediating disputes that have both male and female participants, appears important to ensuring that mediation is perceived as fair and satisfying. Doing so presents logistical and cost challenges in contexts where co-mediation is uncommon. We fail to meet those challenges at the risk of damaging important aspects of the mediation experience.

In contrast, creating racial and ethnic group matches between participants and mediators seems less important to a successful mediation process than programs following this practice have expected. The effectiveness of the mediation process is harmed, however, when a mediation participant is isolated in the face of a mediator and opposing participant who share a racial or ethnic group.

There are two ways to avoid this situation. The first is to use co-mediators, one of whom shares the same racial or ethnic group as each of the participants, a practice to which many community mediation programs already aspire. Consequently, this research supports continuation of this practice when possible, not because of an anticipated connection between a participant and a same-identity-group mediator but because mediation is seen through the eyes of an isolated participant who will feel outnumbered and disadvantaged in a process where the opponent and the neutral seem to have so much in common.

The second option is to avoid a mediator-participant match altogether. According to these results, assigning a mediator who does not share an identity group with any participant is preferable to assigning a mediator who shares an identity group with only one. It also avoids the logistical and financial cost of co-mediation in contexts where this cost presents problems.

Nothing in this study undercuts the value of a diverse group of mediators, but this value relates less strongly to creating racial and ethnic group matches than previously believed. It is essential to have a diverse mediator pool, in part to make it possible to avoid isolating any participant. In particular, it is critical to realize that an overwhelmingly white mediator pool will repeatedly increase the possibility of isolating minority participants. In addition, the importance of having a diverse group of mediators continues
to be firmly rooted in other social goals: those of allowing disputants to see that all sorts of people can develop mediation skills and participate in constructive conflict resolution, of integrating the values of a variety of cultures into the mediation community, and of integrating those skills and beliefs into our diverse communities. Finally, although this research establishes that racial and ethnic group identity is an inadequate proxy for culture, it does not say whether and how culture itself affects mediation and whether there are other ways to match mediators and participants that will enhance the effectiveness of mediation. Future research should explore the subtleties of various aspects of culture in this respect and whether matching according to these aspects has an effect on participants’ experiences in mediation.

References


Merry, S. E. “Cultural Frameworks of Mediation, Asia-Pacific Workshop on Conflict Resolution.” Honolulu: Program on Conflict Resolution, University of Hawaii at Manoa, 1987.


**Lorig Charkoudian** is the executive director of Community Mediation Maryland (CMM), where she supports development and expansion of community mediation and develops innovative uses for community mediation in new settings. She oversees the research at CMM and serves as an adjunct professor at the University of Baltimore Negotiations and Conflict Management Program.

**Ellen Kabcenell Wayne** is the alternative dispute resolution program director at the Department of Defense Education Activity. When this article was initially written, she was on the faculty of the Negotiations and Conflict Management Program at the University of Baltimore. The views expressed in this article are Ms. Wayne’s views in her personal capacity and not those of the Department of Defense or the Department of Defense Education Activity.