

Chapter 2

Getting Beyond Win-Lose and Win-Win: A Situated Model of Adaptive Mediation

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The good news for mediators and the field of mediation is that today there are over 100 different intervention techniques and tactics to choose from when attempting to help shepherd disputants to “yes” (Wall and Dunne 2012). This bounty of approaches allows for a great deal of flexibility and artistry when mediating disputes over disparate issues in dissimilar settings with varied, idiosyncratic disputants. For that reason, some compare mediating with playing jazz music, as both mediators and jazz musicians need to improvise in the moment, responding flexibly to advance the process by drawing from a repertoire of tactics in a way that fits the idiosyncratic ensemble in a given situation (Bellman 2006). This often entails employing tactics from both distributive, win-lose and integrative, win-win strategies as needed (Van De Vliert et al. 1995).

However, this eclecticism also presents a considerable challenge to the scientific advancement of mediation. As Wall and Dunne suggest in their 2012 review of mediation research: “...Faced with such a complex set of categories, scholars have not been able to grapple with the two fundamental questions for mediation: What are the major causes/antecedents of mediators’ strategies? That is, what causes mediators to use the strategies they do? And what are the major impacts of the mediators’ use of particular strategies?” (p. 227).

Consequently, most models of mediation practice today are largely removed from evidence-based research, with one of the most glaring gaps being our

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understanding of the main antecedents of different mediation strategies and tactics that ultimately influence the course of the mediation (Coleman 2011; Coleman et al. 2015; Pruitt and Kugler 2014; Wall and Dunne 2012). In other words, which different strategies should mediators use in different types of mediation situations to be most effective?

In this chapter we describe a project that aims to answer this question. Over the past several years, our research team at the *Morton Deutsch International Center for Cooperation and Conflict Resolution* at Columbia University has embarked on a program of research to identify and model the most fundamental aspects of mediation situations that drive different strategic choices in mediator behaviors and mediation outcomes. Here, we summarize the findings from our research to date, outline our current understanding of our situated model of adaptive mediation, and then discuss the next steps and implications of the model for practice and training in mediation. Ultimately, we hope to offer a theoretical framework for the field that advances research and can be used in a new era of adaptive, evidence-based mediation practice.

Mediation: A Method in Search of an Evidence-Based Model

The frequency and popularity of using mediation as a primary dispute resolution process has been increasing in a variety of institutional settings over the past three decades including schools, nonprofit organizations, businesses, communities and multinational organizations like the United Nations and the World Bank (Kressel 2014; Wall and Dunne 2012). This increase in the usage and status of mediation has put pressure on our field to more closely link its practice with evidence-based research and measureable outcome assessment (Kressel 2014; United Nations Report of the Secretary-General 2012).

However, a close examination of the current state of mediation research reveals a piecemeal and incoherent understanding of what constitutes “effective mediation” and how to achieve it (Coleman et al. 2015; Wall and Lynn 1993; Wall et al. 2001; Wall and Dunne 2012). Studies are typically focused either at the individual level of the mediator (e.g. mediator styles and preferences; see Beardsley et al. 2006; Charkoudian 2012; Kressel 2007; McDermott 2012; Poitras et al. 2015; Riskin 1996; Wall and Kressel 2012) and therefore decontextualized from the broader system of conflict management in which mediators operate, or at the macro level examining case comparisons (see Bercovitch and Lee 2003; Wissler 1995) or data on mediation trends (see Greig 2001; Moordian and Druckman 1999) and therefore removed from the role of mediator decisions and actions. This incoherence contributes to the increasing gap between science and practice in mediation (Coleman 2011; Honeyman et al. 2009; United Nations 2012), and results in a proliferation of approaches to mediation that are informed by the experience of their proponents but effectively divorced from evidence-based research.

Although the field of mediation has made great strides over the past few decades, it has much to gain from an approach to mediation that moves beyond descriptive models and frameworks of practice and employs the scientific method and evidence-based management (Pfeffer and Sutton 2006; Rousseau 2006) by systematically building on comprehensive empirical findings. Such approach can generate and refine a conceptual model of mediation that can predict when different approaches to mediation are likely to be more and less effective (Pruitt and Kugler 2014; Wall and Dunne 2012).

In response to this, in 2011 our team launched a multi-year science-practice project on mediation in order to identify and develop an evidence-based model of mediation that could offer valid, predictive insights into effective practice under different mediation conditions. To meet this goal several steps were required:

1. Identify the fundamental situational dimensions that determine mediators' choice of different strategies in mediation.
2. Conceptualize how the basic dimensions combine to create distinct types of mediation situations.
3. Validate the conceptual model, and identify which mediation strategies and tactics are most commonly and effectively employed in each situation-type.

Thus, our team set out to empirically map the fundamental dimensions of mediation situations in order to theorize and thus develop a better understanding of the most basic situational differences mediators face in their work. We suspect, and will attempt to test the idea, that mediators tend to employ distinct clusters of strategies and tactics when facing each of these different mediation situations. Furthermore, we propose that mediators who develop the capacities to identify and respond to these situational differences with mediation strategies that “fit” each situation type – a competency we call *adaptivity* – will tend to be more effective in their practice.

The resulting situated model of adaptive mediation offers the potential to provide a framework for: (a) assessing mediators' abilities to adaptively use the most appropriate behavioral strategies and tactics in a given situation-type; (b) analyzing situations and providing recommendations for mediators about how to respond effectively to different types of mediation situations, and; (c) making clear predictions about the effectiveness of different mediator tactics in distinct situations to be tested in future research.

Toward a Situated Model of Adaptive Mediation

One of the forefathers of social psychology, Kurt Lewin, famously proposed that $Bf(P \times E)$ – that human behavior (B) is a function of aspects of the person (P; personality, mood, preferences, skills, etc.) as they interact with aspects of the social environment (E; norms, incentives, temperature, etc.; Lewin 1936). In other words, mediators' behaviors are determined by some combination of their own tendencies – *as they interact with* aspects of the specific situations they face. For example,

a facilitative mediator may behave more forcefully under some conditions (like extreme time pressure) than others.

One of Lewin's most notable students, Morton Deutsch, agreed with Lewin's formula, but pushed the question further to ask, "What are the most *fundamental* dimensions of social situations that affect human behavior?" (Wish et al. 1976). Deutsch's subsequent theorizing and research moved social psychology toward the construction of conceptual models that situate individual decisions and behavior in the context of specific social and cultural forces (see Jost and Kruglanski 2002 for a summary). Our approach to model building in mediation follows this tradition and so began by asking, "What are the most fundamental aspects of mediation situations that drive differences in mediator behavior?"

Step 1: Identifying the Fundamental Dimensions of Mediation Situations

To begin to answer this question we first surveyed the empirical literature on mediation published over the last 25 years (see Coleman et al. 2015). Overall, the literature search revealed a broad list of different factors that were found to influence mediators' behavior in mediations, including characteristics of the mediators themselves, characteristics of the disputants, the disputant's perceptions, aspects of the conflicts, and elements of the mediation context:

Characteristics of Mediators: mediators' experience and skill base (Arnold 2007; Mareschal 2005; Poitras 2009), mediators' ties, knowledge and bias toward the parties (Savun 2008; Svensson 2009), mediator's emotional intelligence (Boland and Ross 2010), the clarity of the mediator's role and their role-conception (Grima and Trépo 2009; Van Gramberg 2006), power position of the mediator (Svensson 2007) and mediator's style (Alberts et al. 2005; Asal et al. 2002; Baitar et al. 2012a, b; Beardsley et al. 2006; Goldberg 2005; Jameson et al. 2010; Martinez-Pecino et al. 2008; Quinn et al. 2006; Wall et al. 2011; Wilkenfeld et al. 2003; Yiu et al. 2006).

Characteristics of Disputants: gender (Herrman et al. 2003) and relationship hostility (Mareschal 2005).

Disputants' perceptions: trust between mediator and parties (Stimec and Poitras 2009), perceived mediator credibility (Maoz and Terris 2006), perceived mediator's acceptability (Mareschal 2005), parties' perceptions of fair conduct (Goldman et al. 2008), perceptions of procedural justice (Bollen et al. 2012), perceived mediator's partiality and bias (Poitras 2009; Jehn et al. 2006), perceived mediator's warmth and consideration, as well as chemistry with parties (Poitras 2009).

Aspects of the Conflicts: conflict intensity and resolution status (Alberts et al. 2005; Baitar et al. 2012b; Bercovitch and Gartner 2006; Pinkley et al. 1995), as well as integrative potential (Maoz and Terris 2006; Terris and Maoz 2005).

Aspects of the Mediation Context: culture (Callister and Wall 2004), individual differences within cultures (Davidheiser 2006), the number of parties in multi-party mediation (Böhmelt 2011), a highly conflictual context (Grima and Trépo 2009), time pressure (Grima and Trépo 2009; Pinkley et al. 1995), shifts and changes in conflict dynamics (Vukovic 2012) and past mediation outcomes (Bercovitch and Gartner 2006).

As Wall and Dunne (2012) suggest, this multitude of factors presents an embarrassment of riches which makes it nearly impossible to deduce the major causes/antecedents of mediators' choices of strategies or to offer practical recommendations for mediators regarding which strategies might be most promising in a given type of mediation situation. Therefore, our next step was to reduce this multitude of factors by empirically identifying the most fundamental dimensions underlying the factors that we found in the literature.

We next conducted a survey study with 149 experienced mediators, asking them to describe and then characterize their last case of mediation along bipolar dimensions based on the list of different factors identified in the literature (such as “much common ground to no common ground”, “high intensity to low intensity”, and “no time pressure to high time pressure”; see Coleman et al. 2015). An exploratory factor analysis of the survey responses revealed that most of the factors could be collapsed meaningfully to four basic underlying dimensions of mediation situations (see Fig. 2.1). In other words, of all the various aspects of mediation that researchers had been investigating over the last 30 years, four aspects stood out as most determining of mediator behaviors:

1. The nature of the conflict itself and especially its level of intensity, destructiveness, emotionality and intransigence;
2. The degree of constraints or limitations placed on the mediation by the context or environment in which it takes place, including legal constraints, time limitations, constituent pressure, and so on;
3. The relationship between the parties in terms of their type of cooperative and competitive interdependence, closeness, and similarity; and
4. The overt versus covert nature of the issues and processes in the mediation, including the implicit versus explicit nature of the issues at stake and the degree to which hidden processes and agendas were operating in the conflict

To summarize, results from the survey study indicated that of the many aspects of mediation that have been studied, four factors emerge as most fundamental to mediation situations, characterizing differences in qualities of (1) the conflict, (2) the immediate context, (3) the disputant relationships, and (4) the nature of the issues and processes. These four dimensions were found to be largely unrelated to

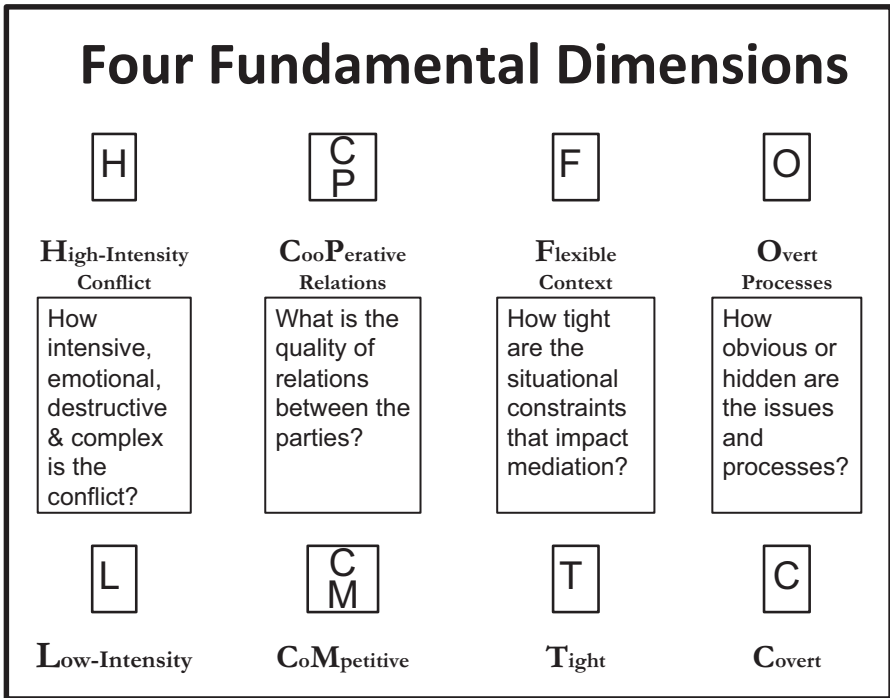


Fig. 2.1 The four fundamental dimensions of mediation

each other. Furthermore, these four basic aspects of mediation situations were found to be independently and distinctively related to differences in mediator’s behavior and mediation processes and outcomes, even when controlling for factors such as mediator sex, experience, style preferences and goals (for details see Coleman et al. 2015). Specifically, we found that: (1) the higher the intensity of the conflict, the more unfriendly and disrespectful the behavior between the parties; (2) the higher the constraints on the mediation situation, the higher the degree of pre-mediation preparation needed and the higher the degree of settlement-orientation of the mediators; (3) the higher the level of similarity and common ground of parties, the more likely the mediation resulted in an agreement; and (4) the more explicit the issues, the higher the perception of procedural justice in mediation, the more often an agreement was reached and the more likely it was that the mediator focused on settlement of the agreement.

Step 2: Conceptualize How the Basic Dimensions Might Combine to Create Distinct Types of Mediation Situations

The four fundamental dimensions of mediation situations identified by the survey study with expert mediators constitute the core of our situated model of adaptive mediation, which provides a sense of the most basic types of contexts in which mediators address conflict (Coleman et al. 2015). Of course the four dimensions of the model rarely operate independently of one another, but are likely to interact in important ways. Therefore, our next task was to conceptualize how different values of the four dimensions might *combine* to promote qualitatively different situation-types, which in turn might afford different tactics used by mediators and ultimately lead to different mediation trajectories and outcomes.

As high and low degrees of each of the four dimensions of the situated model may logically interact with each of the other dimensions, we arrived at a preliminary conceptual matrix of 16 different types of mediation situations. In other words, if we take the most extreme cases of high vs. low intensity conflict, highly constrained versus highly unconstrained contexts, highly cooperative vs. highly competitive relations, and highly overt vs. highly covert issues and processes, then we arrive at a $2 \times 2 \times 2 \times 2 = 16$ cell matrix, representing 16 distinct types of mediation situations. Each of these different situation-types would be likely to induce different types of roles, areas of focus and strategies from mediators. In Table 2.1 we visualize the 16 cells and attribute labels that we think describe the qualitatively different types of situations. The labels provide a basic characterization of how mediators might experience the different situation types and act accordingly.

For instance, conflict situations of high-intensity conflicts with unconstrained contexts and competitive relations over covert issues (see Table 2.1) might be characterized as “crisis” conditions, and elicit a sort of ER Doctor role where the mediator shows high levels of attentiveness and sense of urgency, attempts to control damage, unearth what is hidden and identify the most effective forms of compromise. This type of mediation environment would likely elicit a strategy characterized by high pre-mediation preparation, a settlement-orientation, and evaluative, directive and pressing tactics. In contrast, situations presenting a low-intensity conflict in an unconstrained context over overt issues within cooperative relations (see Table 2.1) could be characterized as “paint-by-numbers” situations, and elicit more of an “Observer” role with less preparation and a more relationally-focused, non-directive, facilitative approach from mediators. Of course this initial matrix was conceptual and speculative and so needed to be validated and revised based on empirical data. This was the focus of the next phase of the project.

Table 2.1 Preliminary conceptual matrix of 16 types of mediation situations

		Conflict: low-intensity		Conflict: high-intensity	
		Relations: cooperative	Relations: competitive	Relations: cooperative	Relations: competitive
Context: unconstrained	Issues & Processes: covert	<p>Situation: Mystery Role: “Friend” Mediator focus: low concern; unearthing what is hidden, emphasizing common-ground and managing relations.</p>	<p>Situation: Puzzle Role: “Colleague” Mediator focus: Low concern; unearthing what is hidden and identifying the most effective compromise</p>	<p>Situation: Family Strife Role: “Therapist” Mediator focus: High concern; unearthing what is hidden, emphasizing common-ground and salvaging/enhancing relations</p>	<p>Situation: Crisis Role: “ER Doctor” Mediator focus: High concern; controlling damage; unearthing what is hidden and identifying the most effective compromise & implementation.</p>
		<p>Strategy: little preparation required; neutral-to- relationally-oriented and clarifying; facilitative, not pressing.</p>	<p>Strategy: Little preparation required; settlement-oriented and clarifying; evaluative but not pressing.</p>	<p>Strategy: Moderate preparation required; relationally-transformationally-oriented and clarifying; directive and pressing.</p>	<p>Strategy: High preparation required; settlement-oriented and analytic; evaluative, directive and pressing; urgent.</p>
Context: unconstrained	Issues & Processes: overt	<p>Situation: Free Ride Role: “Laissez faire” Mediator focus: Low concern, emphasizing common-ground and enhancing relations.</p>	<p>Situation: Splitting Hairs Role: “Moderator” Mediator focus: Low concern; identifying the most effective compromise.</p>	<p>Situation: Family Business Role: “Process Consultant” Mediator focus: High concern; emphasizing common-ground and salvaging/enhancing relations.</p>	<p>Situation: Brawl Role: “Police” Mediator focus: High concern; controlling damage; identifying the most effective compromise & implementation.</p>
		<p>Strategy: Little preparation required; neutral-to- relationally-oriented and analytic; facilitative, not pressing, procedurally balanced and unbiased.</p>	<p>Strategy: Little preparation required; settlement-oriented and analytic; evaluative but not pressing; procedurally balanced and unbiased.</p>	<p>Strategy: Moderate preparation required; relationally-transformationally-oriented and analytic; directive and pressing; procedurally balanced and unbiased.</p>	<p>Strategy: High preparation required; settlement-oriented and analytic; evaluative, directive and pressing; urgent; procedurally balanced and unbiased.</p>

Context: constrained	Issues & Processes: covert	<p>Situation: The Maze</p> <p>Role: “Explorer”</p> <p>Mediator focus: Low concern; Unearthing what is hidden, identifying common-ground and managing relations.</p>	<p>Situation: Game</p> <p>Role: “Manager”</p> <p>Mediator focus: Low concern; unearthing what is hidden, clarifying the rules and identifying the most effective compromise.</p>	<p>Situation: Business Dysfunction</p> <p>Role: “Investigator”</p> <p>Mediator focus: High concern; unearthing what is hidden, emphasizing common-ground and salvaging/enhancing relations.</p>	<p>Situation: Corporate Battle</p> <p>Role: “Lawyer”</p> <p>Mediator focus: High concern; controlling damage; unearthing what is hidden, clarifying rules and identifying the most effective compromise and implementation.</p>
		<p>Strategy: Moderate preparation required; neutral-to-rationally-oriented and clarifying; rule-bound; facilitative, not pressing.</p>	<p>Strategy: Moderate preparation required; settlement-oriented but clarifying; rule-bound; evaluative but not pressing.</p>	<p>Strategy: High preparation required; rule-bound but relationally-transformationally-oriented and clarifying; facilitative, but directive and pressing.</p>	<p>Strategy: High preparation required; settlement-oriented but clarifying; rule-bound; evaluative, directive and pressing; urgent.</p>
		<p>Situation: Paint-By-Numbers</p> <p>Role: “Observer”</p> <p>Mediator focus: Low concern, identifying common-ground and managing relations.</p>	<p>Situation: Chess Match</p> <p>Role: “Referee”</p> <p>Mediator focus: Low concern; Clarifying the rules & identifying the most effective compromise.</p>	<p>Situation: Child-Custody</p> <p>Role: “Shepherd”</p> <p>Mediator focus: High concern; unearthing what is hidden, emphasizing common-ground and salvaging/enhancing relations.</p>	<p>Situation: The Divorce</p> <p>Role: “Judge”</p> <p>Mediator focus: High concern; controlling damage; clarifying the rules and identifying the most effective compromise.</p>
Context: unconstrained	Issues & Processes: overt	<p>Strategy: Little preparation required; rule-bound; neutral-to-rationally-oriented and analytic; facilitative, not pressing; procedurally balanced and unbiased.</p>	<p>Strategy: Moderate preparation required; rule-bound; settlement-oriented and clarifying; evaluative but not pressing; procedurally balanced and unbiased.</p>	<p>Strategy: Moderate preparation required; rule-bound but relationally-transformationally-oriented and analytic; directive and pressing; procedurally balanced and unbiased.</p>	<p>Strategy: High preparation required; settlement-oriented and analytic; rule-bound; evaluative, directive and pressing; urgent; procedurally balanced and unbiased.</p>

Step 3: Validate the Conceptual Model and Identify Which Mediation Strategies and Tactics Are Most Commonly and Effectively Employed in Each Situation-Type

Next, we conducted a series of focus groups with experienced mediators (see Coleman et al. 2015; for more detail on these studies). Our team ran six focus groups with a total of 27 mediators who worked in various domestic mediation settings, including community, family and divorce, commercial, labor and workplace, government, and criminal court.¹ Mediation experience of the participants ranged from 1 to 24 years, with an average of 9.1 years. We were particularly interested in addressing three questions:

1. *Are some of the basic dimensions of the model weighted more heavily than others in determining mediator's strategies and tactics?*
2. *What specific behavioral strategies and tactics do mediators tend to employ when facing each of the mediation situation-types predicted by the model (in terms of the four fundamental dimensions)? Here, we wanted to test the accuracy of our speculative 16-cell matrix of mediation situation-type/behavioral-strategies.*

Analysis of the data from the six focus groups revealed that although other situational differences do matter in mediation (power imbalances, cultural differences, etc.), the four conditions previously identified in our research were seen as the most fundamental to mediator decision choice. In addition, the focus groups agreed that the most primary and important of the four dimensions was the quality of the conflict (whether it is highly intense/intractable or less intense/tractable). In other words, if conflicts are or become highly intense in mediation this needs to be addressed first with a sense of urgency and priority if the mediation is to continue. Under these conditions, the high-intensity mediation strategy is likely to be employed regardless of the levels of the other three dimensions (constraints, competitiveness and covert processes). One mediator captured this during a focus group when stating: "... the high intensity is just the most obvious. It's like if someone is hit by a car ... and if they're gushing blood; ... they have many things that need to be addressed, but [first] you've gotta stop the gushing blood" (Quote by one of the participants, Coleman et al. 2015).

Beyond this, we learned that different situation types are associated with distinct and coherent mediation strategies. The mediation strategies are especially concise for constrained situations, high competitiveness and clear covert processes. More flexibility, cooperativeness, and overt issues and processes generally showed more moderation in behavior.

¹ At this stage of the research, we began to work separately with groups of domestic versus international mediators, as the behavioral tactics are considerably different from one setting to the next. The results described here focus on domestic mediation.

In sum, the results of the survey and the focus groups suggest a framework for characterizing mediation situations along the four dimensions (see Fig. 2.1) and inferring behavioral strategies that fit the situation. Choosing behavioral strategies that are aligned with the situational demands is what we call “adaptive mediation”. As the mediation situation changes over time within one mediation, or as the mediator encounters different mediation situations across multiple mediations, the mediators are well served to adapt their behavioral tactics accordingly. The resulting model of adaptive mediation suggests that mediators respond to changes in mediation situations with a logical series of considerations: (1) How intense is the conflict?, (2) How constrained is the mediation context?, (3) How competitive or cooperative is the relationship of the disputants?, and (4) how overt versus covert are the issues and processes?

The flow of the questions necessary to address the fundamental aspects of a given situation and the respective behavioral tactics are outlined in the flow chart on adaptive mediation processes and described below (see Fig. 2.2).

As outlined above, the intensity of the conflict needs to be considered first. If the conflict is highly intense, the intensity requires full attention and ultimately should be decreased.

High Intensity Conflict Situations: The Medic The general strategy that emerged from the discussions for high intensity conflicts was one of *attempting to manage or lessen the intensity level of the conflict in a manner that would allow a constructive mediation process to continue*. If this becomes impossible, mediators recommended ending the mediation and referring the parties to alternative processes or authorities. This strategy is highly attuned to social-emotional issues, highly assertive, and suggests focusing on issues of high importance. Therefore, we labeled this role of the mediator in high-intensity situations *The Medic* – someone trained in the role of emergency medical responder, who must triage the problem and stabilize the situation sufficiently before moving onto other courses of treatment. This strategy included the following actions: the mediator is present, active, directive and enforces guidelines. Parties might vent or require time while the mediator reframes, rethinks, and reflects. It was noted in the focus groups that the mediator’s self-awareness is critical in these situations. If the conflict shows lower levels of intensity the mediator can take on the role of the facilitator of the processes.

Low Intensity Conflict (Overall): The Facilitator Even though conflicts with lower levels of intensity can be very different, the general role of the mediator can be described as facilitator in the process towards conflict resolution. Strategies might vary, but are generally less active than in high intensity conflicts to the point where the mediator “disappears” and the parties own the process. A specific strategy can only be deduced when considering other situational aspects. When facing a low intensity conflict other aspects of the situation become important for the mediator’s choice of the appropriate tactics. According to our model the mediator might consider the quality of the context (tight versus flexible contexts), the quality of the relationship (cooperative versus competitive relation-

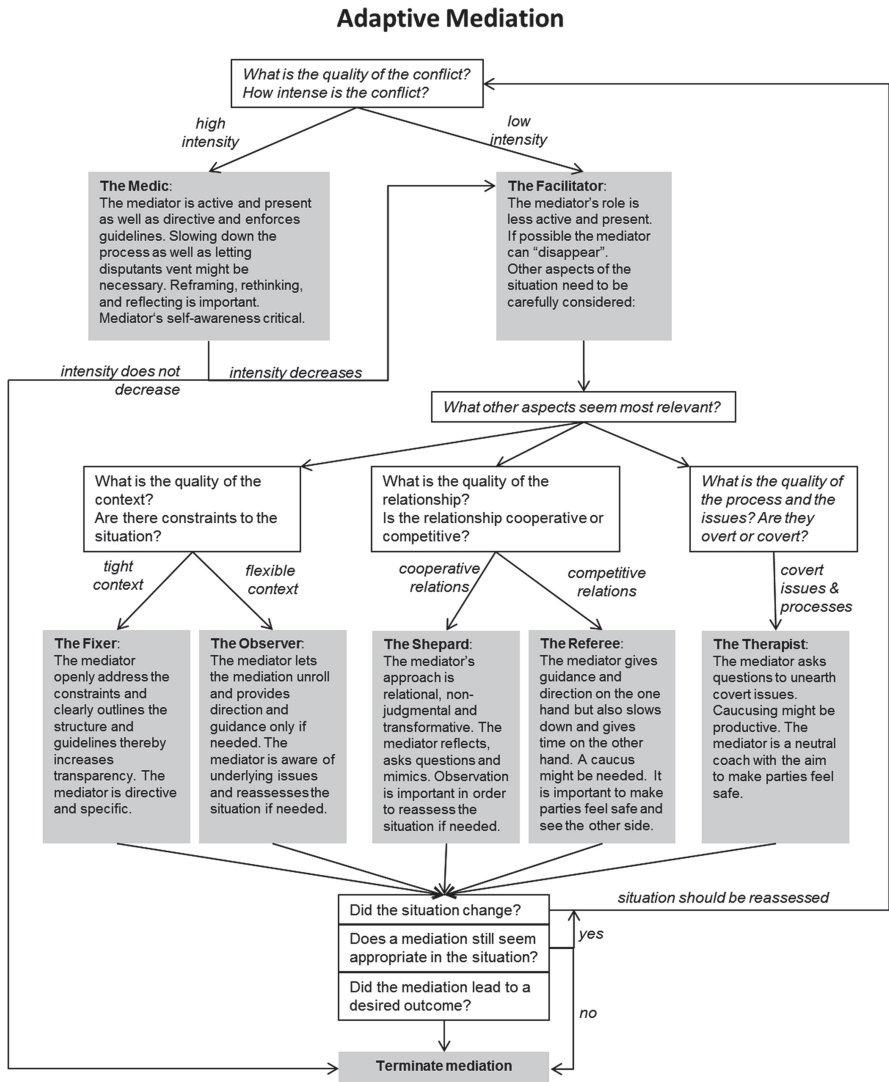


Fig. 2.2 A flow chart on adaptive mediation process

ships), and the quality of the issues and processes (over versus covert issues and processes), depending on what is most relevant in a given situation. As a situation changes a reassessment is necessary.

High Constraint (and Low Intensity) Mediation Situations: The Fixer Under these conditions, the general strategy as expressed by mediators was to *increase control and efficiency to work within the present constraints – or address and lessen the constraints*. This strategy is more task or problem-oriented than social-emotional, is directive, assertive, and focuses on prioritizing important issues

and/or lowering aspirations of the disputants. Accordingly, we think of this role as *The Fixer* – such as Harvey Keitel in *Pulp Fiction* or a Mafia fixer that gets things done or, let's just say, adjusts expectations. The actions associated with this role include: Constraints are openly discussed and the structure and guidelines are clearly stated. The process is transparent and the mediator directive and specific.

Low Constraint (and Low Intensity) Mediation Situations: The Observer If the constraints and intensity are low and no other aspects of the situation seem relevant, the mediator can let the mediation unroll and observe. Some guidance and direction is provided to facilitate the conflict resolution process. However, the mediator ought to be attentive to changes in the situation. If other aspects seem relevant, for example, if covert issues emerge, the situation needs to be reassessed.

High Competition (and Low Intensity) Mediation Situations: The Referee Under highly competitive mediation conditions, the general strategy identified by the mediators was to try to *encourage the disputants to bargain fairly and settle efficiently, with more of a task-outcome focus than relational*. We refer to this mediator role as: *The Referee*. Some of the actions employed in this role included: Caucusing to help the parties prepare to bargain effectively, provide guidance and direction on fair distributive procedures, slow down and provide sufficient time for the negotiation to unfold, and help the disputants feel safe and understand the positions of the other side.

High Cooperation (and Low Intensity) Mediation Situations: The Shepard When highly cooperative conditions and relations display themselves in low-intensity mediation, the general strategy recommended by the mediators was what we consider *a more standard or default approach to mediation, one which utilizes more open, facilitative forms of dialogue and problem-solving, which are less directive and more relationally-focused*. We characterize this role as: *The Shepherd*. These are the strategies and tactics most mediators are trained to implement. Recommended actions include: Withholding judgment and applying more transformative approaches. This includes reflecting, asking questions, observing, and mimicking. Nevertheless the mediator should be alert to changes in the situation and to reassess the situation if needed (e.g., when the relationship becomes more competitive).

Highly Covert Issues/Processes (and Low Intensity) Mediation Situations: The Therapist Finally, when the mediator begins to suspect that there are important covert issues or processes at play that affect the mediation, they reported tending to shift their strategy to one where they are able to *probe more deeply and carefully into the hidden or underlying issues*. We call this role: *The Therapist*. It often involves: caucusing, inquiring and probing directly to unearth covert issues, being a neutral coach to help parties equally in exploring their underlying concerns, and ensuring safety.

These findings suggest that instead of 16 distinct mediation situation-types (as shown in Table 2.1), a more likely model of basic situational differences in mediation may be reflected by a simpler model of five basic (more extreme)

situation-types: high-intensity, highly-constrained, highly-competitive, highly-cooperative and those entailing important covert issues and processes (see Fig. 2.2). The findings from the focus groups also suggest that mediators tend to alter their strategies based on the different types of situations they face across different mediations or in an ongoing mediation where circumstances change. Together our findings suggest that mediators would do well to consider the shifting tides of the four basic dimensions of mediations and adjust their strategies.

Ultimately, we posit that mediators ought to have the capacity to *adapt* in order to be effective (Coleman et al. 2010, 2012, 2013; Coleman and Kugler 2014; Van De Vliert et al. 1995). This may be a challenge to most mediators as prior research has shown that mediators often hold strong chronic preferences for how they approach mediations and find it difficult when situations require a different approach (Beardsley et al. 2006; Kressel 2007, 2014; Riskin 2005). However, the nature and value of adaptivity in mediation settings has yet to be specified sufficiently or empirically tested.

Next Steps in the Program of Research

We recently conducted a second survey study of experienced mediators to empirically validate and better specify the situation-type/behavioral strategy relationships (Coleman et al. 2015). Preliminary findings suggest further support for the situated model of adaptive mediation, and provide more detail on the nature of the different strategies and tactics associated with the distinct types of situations.

Based on the next iteration of the situated model, our team plans to develop an assessment instrument to (a) measure mediator's most dominant or commonly employed strategies as well as (b) assess their *adaptivity* or capacity to read important changes in mediation situations and to respond to them with strategies and tactics that are more "fitting" and thus more effective in those situations. This will allow us to begin to empirically test the implications of mediator adaptivity for effectiveness in mediation and sustainability of agreements. In time, we plan to develop new basic and advanced mediation trainings based on the situated model and on the concomitant strategies and meta-competencies associated with adaptive mediation.

Conclusion

The practice of mediation, with its ancient roots and intuitive win-win appeal, has recently gained a new level of attention. Yet much work remains to be done to refine and advance the practical utility of the method through systematic research. This chapter outlines a new theoretical approach to mediation that offers great promise for using evidence-based research to move the mediation field forward. The situated

model of adaptive mediation provides an integrative platform for better conceptualizing basic differences in mediations situations, which allows us to begin to better understand which of the 100 plus tactics we might use in different mediation situations to best effect. As such, we can begin to understand the general contingencies associated with more and less directive, non-directive, facilitative, evaluative, integrative, and distributive approaches to mediation.

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