Why Do Mediators Mediate the Way They Do?

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Introduction

Psychologist Kenneth Kressel argued that mediators’ mental models of mediation are largely unconscious mixtures of formal models and “personal ‘mini-theories’ of conflict and role of mediators.” In *How Do Mediators Decide What to Do?, Implicit Schemas of Practice and Mediator Decisionmaking*, his insightful article based on several empirical studies, he defined mental schemas or models as “ideas the mediator holds about the role of the mediator; the goals to be attained (and avoided), and the interventions that are permissible (and are impermissible) in striving to reach those goals.” They are “mediator coping responses to the complex and demanding task of intervention decisionmaking and the limitations of formal models of practice and conscious human deliberation.”

In another article, *Mediator Thinking in Civil Cases*, James Wall and Kenneth Kressel described mediators’ thinking in 20 real-life civil mediations. They shadowed mediators during the cases and, as they went from one caucus to another, they asked the mediators to describe what they were thinking. Adapting Daniel Kahneman’s framework in his book, *Thinking, Fast and Slow*, Wall and Kressel found evidence that [mediators’] thinking unfolds along two planes: one intuitive (system 1) and the other rational (system 2). On the former, mediators frame the mediation as a distributive process, instinctively evaluate the situation as well as the parties, and engage in habitual interventions. On the rational plane, the mediators develop goals, rationally evaluate the situation, mentally map what is going on, and

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choose among a variety of rational steps, such as pressing, delaying the mediation, and extracting offers, in order to accomplish their goals.

These studies suggest that mediators’ perceptions about why they mediate the way they do often are a disorganized hodgepodge of ideas. They develop their ideas from courses or trainings, continuing education programs, articles, and their experiences mediating. Over time, they develop routines that they may perform on “automatic pilot.”

I have been developing “real practice system” theory, which argues that each mediator has a unique practice system, albeit one that often is based on vague, somewhat unconscious, and unsystematic understandings. Mediators’ systems grow out of their personal histories, values, goals, motivations, knowledge, and skills as well as the parties and subjects in their cases. From their mediation experiences, they develop categories of cases, parties, and behavior patterns, and they design routine procedures and strategies for dealing with recurring challenges before, during, and after their mediation sessions.

I recently conducted educational programs with two groups of mediators to learn why they developed their particular practice systems and to encourage them to refine them consciously and systematically. On September 22, 2023, I led a session at the annual conference of the Association of Missouri Mediators. On October 11, 2023, I presented the same program to mediation panelists of the US District Court for the Southern District of New York.

I conducted a survey at the end of these programs to find out what mediators learned from the discussions and how they might improve their practices in the future. This article presents the results of those surveys, comparing the responses of the two groups. Based on the survey results, a follow-up article – Helping You Do The Best Mediation You Can – suggests a practical program for mediators to understand and improve their practice systems, individually and in groups.

The Educational Programs

The programs in Missouri and New York each lasted 90 minutes and used a hybrid format including people attending in person and by video. I used a version of this powerpoint in both programs.

The programs consisted of (1) a brief summary of real practice system theory, (2) an exercise in which attendees wrote answers to a series of self-assessment questions about their individual practice systems, (3) small group discussions about their insights from the exercise, and (4) a plenary discussion about their insights.

The questions in the exercise asked attendees to individually reflect on: (1) their contributions to their mediations (e.g., history, education, training, experiences, values, goals, and benefits sought from mediation practice), (2) descriptions of the attendees at
the programs and types of cases they mediate, (3) their practice system design of activities before and during mediation sessions, and (4) their reflections on their practices to improve their systems. In the Missouri presentation, I asked people to write their answers on a blank sheet of paper or their computers. In the New York presentation, I gave people this worksheet to answer the questions.

The directions for the group discussions asked people to discuss: (1) the most important factors affecting how they mediate, (2) what they learned from the exercise, (3) how they could improve their mediation techniques, and (4) if it would be worthwhile to work more on their reflection exercises.

Methodology

At the end of the programs, I asked attendees to complete this survey. In the Missouri program, I received 17 responses from 26 attendees, a 65% response rate. Due to technical problems, I received no responses from the people participating online. In the New York program, I received 46 responses from 65 attendees, a 71% response rate. Thirty-four responses were from people attending by video (out of 49 video attendees) and 12 were from people attending in person (out of 16 in-person attendees). The response rates were similar for the video and in-person attendees. This document presents frequencies of responses to the questions.

All but one of the questions in the survey were open-ended questions, and I coded the responses into categories. Using this qualitative methodology enabled me to learn attendees’ thinking in their own words. As a result, the findings have high internal validity. In other words, the data pretty accurately reflect the views of the attendees in the study. If they could choose only from a few pre-determined response options, their responses would not necessarily fit their perspectives. Coding the responses required some subjective analysis and resulted in less precision than with fixed-choice options, but the tradeoff of getting greater internal validity is worth it, especially in this study with a relatively small sample. Although the frequencies of responses are not precise, substantial differences in frequencies between particular responses and between the two groups presumably are meaningful.

The findings have limited external validity. In other words, the findings are not necessarily generalizable to other mediators. This study is based on a small, non-random sample of mediators who were interested in attending a program on self-assessment of their mediation systems. Thus the results should be less applicable to mediators who don’t share these interests. The sample consisted of mediators with certain backgrounds described below and the results might be different for mediators with different backgrounds. The mediators in this study reacted to a particular educational program. Mediators might respond differently to a different educational experience. Their feedback could lead to improvements in the educational program, which hopefully would produce even more favorable reactions than the mediators in these programs.
Considering the premises of real practice system theory, the limitations in external validity are not serious problems. The theory argues that mediators’ systems are influenced by so many possible variables that practitioners can benefit more by understanding and designing their own unique systems than by relying on empirical generalizations. Empirical findings can helpfully suggest potential factors that might affect mediators’ thoughts and actions. Ultimately, however, mediators should do the best they can to consciously and intentionally design their particular systems by incorporating a range of inputs including analyses of their own experiences.

Survey Findings

Attendees’ Backgrounds and Identities

The backgrounds of attendees in the two programs reflect the membership of the two organizations. The Association of Missouri Mediators (AMM) website states, “The Association of Missouri Mediators was formed in 1998 as an educational and networking organization to connect mediators across the state and share information on the process of mediation with the public.” AMM members must have a certain amount of training based on the types of cases they handle, comply with its standards of conduct, and agree to participate in its complaint resolution process. AMM members handle a wide variety of cases including business, community, construction, consumer, education, elder, family, personal injury, and workplace disputes.

Attendees in the New York program are members of the panel of volunteer mediators maintained by the US District Court for the Southern District of New York. Since 2012, panelists must (1) be members in good standing of the bar of any US district court; (2) have substantial exposure to mediation in federal court or mediated cases in other settings; (3) have successfully completed an initial mediation training of at least 30 hours within the last three years or served as a mediator in more than five disputes, and completed certain training during the last three years; (4) provide a letter of reference addressing the applicant’s mediation process skills; and (5) be willing to participate in training, mentoring programs, and ongoing assessment. Mediators who joined the panel before 2012 do not necessarily meet these requirements.

The survey asked, “Please summarize your background and experience (e.g., professional role(s), amount of experience, types of cases handled)” and produced 15 responses from Missouri attendees and 46 responses from New York attendees. This question was intended to produce a control variable identifying factors that might affect attendees’ responses. Because it is an open-ended question, attendees could choose to mention any aspects of their backgrounds or experience. This question was designed to produce short responses, and attendees mentioned factors that seemed most relevant to them. As a result, the responses provided more valid descriptions of attendees’ subjective identifications than their objective characteristics. For example, all of the New York attendees are attorneys but only 79% responded to this question by identifying as current or retired attorneys. If the survey asked a yes-or-no question if the attendee was an attorney, it would produce more valid objective descriptions but
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less valid subjective identifications. Given the open-ended structure of the question, the resulting frequencies generally should be interpreted as minimums of the objective characteristics, recognizing that attendees could not include all possible characteristics in short answers.

Predictably, more New York attendees identified as attorneys than the Missouri attendees. Fifty seven percent of the New York attendees identified as current attorneys and 22% identified as retired attorneys. By contrast, only 47% of the Missouri attendees identified as (current) attorneys and none identified as retired attorneys. Forty percent identified as non-attorneys.

The types of cases that attendees handle was the most relevant identifier for both groups. Seventy-three percent of the Missouri attendees and 83% of the New York attendees identified themselves in this way. However, they reported handling different types of cases. Forty-seven percent of the Missouri attendees mentioned handling family cases, 27% mentioned employment cases, and 13% mentioned commercial cases. By contrast, 57% of the New York attendees mentioned commercial cases, 41% mentioned employment cases, and only 4% mentioned family cases.

The New York attendees seemed to handle a smaller number of case types than the Missouri attendees. Forty-one percent of the New York attendees mentioned only one or two types of cases, and 28% percent mentioned three or more case types. Only 20% of the Missouri attendees mentioned only one or two types of cases and 27% mentioned three or more types. This suggests that, as a group, the New York attendees probably are more specialized than the Missouri attendees, but this should be interpreted cautiously. Many attendees in both groups did not refer to case types at all. If the survey had included a fixed-choice question listing numerous case types, it would have produced better data about the kinds of cases they handle and how specialized they are.

Many attendees identified by the length of their professional experience, including 53% of Missouri attendees and 83% of New York attendees. Forty percent of the Missouri attendees and 59% of the New York attendees identified as having practiced for at least 20 years. This generally included practice as an attorney and/or a mediator, though that was not always clear.

A smaller percentage of attendees mentioned the number of cases they had mediated. This included 13% of Missouri attendees and 20% of New York attendees.

Factors Affecting Attendees’ Actions

The survey asked “What are the most important factors affecting the way you mediate?” and produced 16 responses from Missouri attendees and 44 responses from New York attendees. This question prompted a wide range of responses with generally similar patterns by the Missouri and New York attendees. The responses reflect the attendees’ perceptions and intentions about their mediation approaches, which

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presumably are imperfectly related to their actual behavior in mediation. We all have biases, especially about ourselves. So these results should be interpreted cautiously.

About half of both groups (Missouri - 56%, New York - 48%) referred to various aspects of the mediation participants’ mindsets and behaviors. Attendees most often referred to participants’ expectations and interests in reaching agreement. One attendee mentioned “parties’ realism about the cost benefits of litigating.” Another referred to the “expressed and hidden agenda of the parties.” Two attendees identified the “sophistication” of the participants.

As a related matter, about one fifth of attendees (Missouri - 19%, New York - 20%) discussed how the parties’ representation by attorneys or by themselves affected the dynamics. Some noted that attorneys’ cooperation (or lack thereof) could make a difference. One identified the “nature of lawyer-client relationship and who controls the decision-making.” Some referred to whether the parties were pro se (self-represented), with one attendee saying that these parties were the “most difficult.”

Some attendees identified the relationships and dynamics between the participants, which might be between the parties, attorneys, or attorney-party pairs (Missouri - 13%, New York - 9%). One attendee listed the “status of earlier negotiations between the parties [and the] level of acrimony between the parties or lawyers.” Another mentioned the “relationship of counsel and party and between counsel and parties, [and the] nature of lawyer-client relationship and who controls the decision-making.”

A substantial proportion of the attendees indicated that the type of case affects their mediation approach (Missouri - 38%, New York - 27%). Most simply wrote “type of case” or some variation. That might be because it seems obvious that the parties, issues, and dynamics differ in family, employment, and commercial cases, for example. Some attendees mentioned some specific types of cases, such as divorce, Americans with Disabilities Act, and sexual harassment cases, prompting them to use distinctive techniques. One wrote, “For the ADA Title III cases, my approach is purely facilitative. For the others, it’s mostly facilitative but I have tried to incorporate a somewhat transformative approach.”

A substantial proportion of attendees, especially in the Missouri group, cited their own goals in mediation as among the most important factors affecting their approach (Missouri - 38%, New York - 18%). Seven attendees cited their desires to help parties in various ways. These included “wanting to make sure the parties feel heard,” helping give parties “what they want,” solving problems, promoting self-determination, reaching decisions, avoiding “long, drawn out litigation,” and “obtain[ing] closure and control over the conflict.” Various attendees referred to their personal values, including collaboration, promoting fairness, seeking consensus, solving

\[1\] I use the term “participant” to include parties and/or attorneys.
problems, “being a person of peace,” and supporting the attendee’s diversity and inclusion work.

One quarter of the attendees described certain techniques as being among the most important factors affecting their mediations (Missouri - 25%, New York - 25%). By far, attendees most often mentioned preparation before mediation sessions. One attendee said that it is “important for me to do as many pre-mediation sessions as possible for me to adjust and adapt the way I mediate to the specific matter, counsel and clients.” Another identified “preparation, meeting with the attorneys ahead of time. Finding out what their experiences have been with mediation, experience with each other, asking how I can be helpful.” Several mentioned the importance of listening. Attendees also identified other techniques including “setting the context of the mediation in an opening statement,” using caucuses to “find middle ground,” and “conveying to the parties the important opportunity mediation presents to obtain closure and control over the conflict.”

Attendees attributed a wide variety of professional experiences as factors affecting their mediation techniques (Missouri - 13%, New York - 18%). Interestingly, only one of the attendees referred to experience as a mediator. Four attendees mentioned their experiences as lawyer-advocates. One listed “30 years of intense, time consuming litigation, with sub-optimal results all around,” another described “experience as an advocate, wanting to make sure the parties feel heard,” and another wrote about experience as an in-house litigator, litigation portfolio manager, and party-representative in mediations. Two mentioned substantive knowledge of the “subject matter” or “the family court system and family black letter law.” One described experiences serving on ADR committees.

Perhaps not surprisingly, a substantial proportion of the New York attendees alluded to their evaluation of the cases but none of the Missouri attendees did so (Missouri - 0%, New York - 20%). Several attendees referred to the facts and merits of the parties' respective positions. Others listed “parties' realism about the cost[s and] benefits of litigating” and “how far the parties are from a reasonable risk assessment.” One wrote that “during the process, each side’s position is discussed in depth in separate caucuses, and privately with the attorneys to find middle ground. Many factors can affect the mediation including ability to pay a settlement (insurance or lack thereof), inability to succeed on [summary judgment, and] the rise in jury verdicts since the pandemic.”

Smaller proportions of attendees referred to their training and mediation philosophy, the stage of litigation, practical constraints, and the attendees' personal experiences.
What Attendees Learned in the Program

The survey asked “What did you learn that you wouldn’t have learned without this exercise to write a description of your mediation approach?” and produced 15 responses from Missouri attendees and 37 responses from New York attendees.

This was essentially a “double-barreled” question, referring to both the program overall and producing a written description. I was particularly interested in the element of writing the descriptions because I thought that writing the exercises might be particularly valuable. Many of the attendees focused on the program overall, including the discussions.

Many of the attendees simply appreciated talking with other attendees (Missouri - 47%, New York - 16%). Most of the comments indicated that they liked learning about others’ mediation techniques, noting similarities and differences with their own approaches.

As intended, the programs prompted many of the attendees to better understand their own techniques, often specifically mentioning them as parts of their practice system (Missouri - 40%, New York - 27%). Some said they learned the “importance of having a specific mediation practice system,” “all the different factors that affect how I mediate” and “look[ing] at [my] system in a methodical way.” Others said, “I learned that I have a system and that I can be reflective about what that system is” and “I actually have great flexibility in dealing with a variety of matters and use a variety of systems depending on the situation.” Another reported “thinking about ‘how’ I mediate instead of being more on auto-pilot.” For some attendees, the exercise prompted them to recognize specific aspects of their practice systems such as their focus on parties’ readiness to mediate, opening statements, and their facilitative approach.

The exercise also prompted some attendees to recognize a need for and improvement of their mediation techniques and reflection about them (Missouri - 13%, New York - 22%). One attendee identified a need to think more about preparation and another recognized a “need to focus more on asking questions of the parties about their risk assessment [rather] than going straight to offering mine.” Many focused particularly on a need for more self-reflection. One highlighted “the importance not only of self-reflection subsequent to mediation, but also to contemplate how my background personally & professionally has impacted why and how I mediate.” Another said, “I found I need to be more thoughtful about my system and to do more ‘after-action’ analysis.” One recognized “the need for rigorous analysis in my introspection and the need to commit my observations / reflections in writing.”

The exercise helped some attendees validate their approach to mediation (Missouri - 7%, New York - 16%). For example, one attendee wrote, “I always work with an outline and prepare by reading the material and communicating with the attorneys, so I really didn't learn much else that I would do differently.” Another said,
“I wasn’t surprised by what I wrote down since the process gets repeated with every mediation.” Another said succinctly, “My mediation approach is on point.”

Fortunately, most of the attendees felt that they learned something important from the program. Only a small proportion said that they learned little or nothing (Missouri - 0%, New York - 11%).

**How Attendees Planned to Change Their Mediation Techniques**

The survey asked “What changes, if any, do you plan to make in your mediation techniques?” and produced 16 responses from Missouri attendees and 40 responses from New York attendees.

Some attendees indicated that the program prompted them to become more conscious and intentional in their techniques (Missouri - 25%, New York - 15%). Responses included that attendees would “revisit my customary practices. Think outside my normal ways,” “work less on instinct; think out [my] approach more carefully,” “formally write out my techniques,” and “develop some kind of action plan.”

Several attendees said that they plan to reflect on their mediations after the cases end (Missouri - 25%, New York - 15%). One mentioned writing these reflections, not simply relying on their memories. And some plan to talk with attorneys after mediations to get their feedback.

The exercise prompted some attendees to increase their preparation of the participants before mediation sessions (Missouri - 6%, New York - 28%). One wrote, “I intend to place greater emphasis on pre-mediation discussions with counsel (and, since I can’t speak to the parties directly, exploring with counsel the expectations and understandings of their clients).” Another said, “Especially with the Court assignments – do more upfront work with the attorneys to make sure they and their clients are ready for the mediation session.” A third attendee said, “I plan to have separate telephone calls with counsel in addition to the joint pre-mediation telephone call.”

Several attendees expressed interest in participating in educational practice groups (Missouri - 13%, New York - 8%). One attendee who is already part of a practice group wants to make this exercise a regular activity in the group.

Attendees mentioned a variety of other changes they planned to make in their practices (Missouri - 25%, New York - 33%). These included listening more (especially to individual parties), probing to learn participants’ expectations, emphasizing that parties retain control in mediation unlike at trial, incorporating apologies more, being “less judgmental,” refraining from or delaying expressing opinions unless requested, observing other mediators, and co-mediating.
The vast majority of the attendees planned to make some changes in their practice following this program. Only 13% of attendees in each group said that they did not plan to make any changes.

**What Worked Well in the Programs**

The survey asked “What worked well with the exercise?” and produced 17 responses from Missouri attendees and 42 responses from New York attendees. Both groups had similar reactions.

The attendees LOVED the small group discussions (Missouri - 88%, New York - 74%). One attendee “loved my group. I never met them before and could have spent another 30 minutes or more.” Another said, “It was nice to explore the whys and the hows as to have they impact the work” and one said that the discussion “will influence my approach going forward.” One attendee said that there was an “intimate sharing of experiences” and the five people in the group are “contemplating starting our own peer mediation group.”

Part of the benefit of the program was hearing others' views and getting new ideas (Missouri - 24%, New York - 29%). One attendee said that the program prompted them to “reflect upon how and why I mediate the way I do.” Similarly, another said, “Answering the questions highlighted the things I had not thought about.” The program stimulated thinking about how attendees might improve their practices. One said, that it “got me to thinking about what I do as a mediator and why in order to become a better mediator.” Another said that it was helpful to “break[] down the steps” in mediation and identify “questions to address in devising a formal program design.”

Some attendees credited the questions in the worksheets for prompting useful reflection (Missouri - 12%, New York - 21%). Some also mentioned reading the “Ten Real Mediation Systems” article in advance, the powerpoint, and the presentation as helpful.

The final open-ended question was “What other reactions did you have to this exercise?” and produced 12 responses from Missouri attendees and 25 responses from New York attendees. The reactions were overwhelmingly positive (Missouri - 83%, New York - 52%). Attendees described it as “worthwhile,” “very positive,” “thought provoking,” “very practical and helpful,” “valuable,” “relevant to the work we do,” “stimulating and challenging,” “great,” and “excellent.” One said that it “shows the need for constant self-improvement.” Another said that it provided a “critical look at my pre-mediation activities.” Another said that it “recharged” their approach to mediation.

Many of the positive responses were about attendees learning about their approaches in mediation (Missouri - 17%, New York - 24%). One attendee said that it “highlighted how much I did not know.” Another said that it was helpful to “think[] about what I do and what factors might lead me to do it.” Along the same lines, another said that it is “valuable to pay attention to [how] one’s values and goals affect what we do.”
One said that it is “such a treat to have time to pause and reflect. Usually [I’m] in too much of a hurry to ask myself these kinds of questions.”

Only a few attendees responded that the exercise was not helpful (Missouri - 0%, New York - 8%).

The final question was a multiple choice question, “After the program, do you plan to work on this exercise some more?”, and produced 17 responses from Missouri attendees and 44 responses from New York attendees. The options were "yes," “maybe,” and “no.” The program stimulated most attendees to plan to continue working on these issues (Missouri - 65%, New York - 50%). About a third of the attendees weren’t sure (Missouri - 29%, New York - 32%). A small proportion said that they don’t plan to continue working on this (Missouri - 6%, New York - 18%).

What Could Be Improved in the Programs

The survey asked, “How could this exercise be improved?” and produced 12 responses from Missouri attendees and 38 responses from New York attendees.

As noted above, the attendees generally enjoyed the group discussions and some would have liked more time for them (Missouri - 8%, New York - 53%). Apparently, there was a miscommunication with the attendees in the New York program. Some attendees expressed frustration that they were asked to discuss too many questions in the small groups. They apparently thought that they were asked to discuss the 18 questions in the worksheets. I intended for them to discuss only four questions, dealing with the most important factors affecting how they mediate, what they learned from the exercise, how they could improve their mediation techniques, and if it would be worthwhile to work more on their reflection exercises.

Some attendees would have liked to have a presentation of specific cases, suggestions for mediation techniques, or examples of mediation systems (Missouri - 17%, New York - 18%). For example, several attendees suggested having discussions of hypothetical scenarios. One attendee suggested presenting descriptions of how mediators improved after reflection.

Attendees gave a variety of other suggestions (Missouri - 50%, New York - 21%). Several suggested having people read the article and complete the worksheet in advance to provide more time for discussion. One attendee expressed concern about using time to have people complete the worksheet during the program. One suggested having experienced mediators respond to the questions.

Some attendees suggested providing more guidance for the group discussions. One said that the small group discussions didn’t have sufficient guidance as to what attendees were supposed to do. Another suggested that someone should be designated as the moderator of the discussion. In that group, one person dominated the conversation and no one seemed to keep track of the time.
Summary

This study supports the fundamental premises of real practice systems theory. Mediators have unique practice systems based on numerous variables including their personal histories, values, goals, motivations, knowledge, and skills as well as the parties and subjects in their cases. While mediators consciously use some techniques, much of their behavior is based on unconscious routines. Through reflection, individually and in groups, mediators can become more aware of their systems and consciously decide to refine and improve them.

The responses by Missouri and New York attendees highlight some similarities and differences in attendees’ systems. Both groups identify themselves primarily based on the types of cases they handle. The Missouri group seems to handle a wider range of cases and not specialize as much as the New York group. Both groups also identify based on the length of their experience, though the New York attendees do so more than the Missouri attendees do and apparently have been in practice longer.

As a group, the Missouri attendees reflect a wide range of experiences. About half of the Missouri attendees are attorneys and 40% are not, whereas the New York attendees all are attorneys and about a quarter are retired attorneys. This study could not tell if these characteristics affect the attendees’ behaviors, though it seems quite likely that they do.

The participants’ mindsets and behaviors were the most important factors affecting the attendees’ mediation techniques as identified by both groups. They also mentioned the type of case, which may be related to the participants’ mindsets and behaviors. For example, the profiles of participants in commercial, employment, and family cases – the three types they mentioned most often – clearly differ from each other quite a bit. About one fifth of attendees referred to whether the parties were represented by attorneys or were self-represented. The attendees also frequently cited their professional goals and preferred techniques as factors affecting the way they mediate. One of the few striking differences between the Missouri and New York attendees was that none of the former group alluded to their evaluation of cases whereas 20% of the latter did so. Only a small proportion of attendees mentioned their training as a factor and only a small number of those attendees mentioned traditional mediation theories.

When asked what they learned from the program, the largest proportion of attendees said that they recognize techniques or practice system they used. This suggests that they generally are not conscious of significant elements of their practice or think of what they do as a system. The program prompted some attendees to perceive a need to be more conscious and intentional in their work and to reflect more about what they do.

A large majority of both groups said that the small group in discussions in the program were helpful.
Overall, the attendees found the educational programs to be very valuable, with a substantial proportion saying that it helped them learn about their own mediation approaches. Two thirds of the Missouri attendees and half of the New York attendees plan to continue working on these issues after the program, and about one third of each group said that they might do so.

The main suggestions for improvements were to have attendees prepare more before the programs and have more time for discussion.

Conclusion

This study is action research designed to help analyze and develop the Real Practice Systems Project. As the term suggests, action research involves research intended to promote social action. Ideally, it is part of a cycle of research and action, where research findings promote desired goals and actions, which then are studied to analyze the effects of the actions.

This study was designed to test two premises. First, it analyzes the theory that each mediator uses a unique practice system based on a complex combination of factors including their personal histories, values, goals, motivations, knowledge, and skills as well as the parties and subjects in their cases. While mediators consciously use some techniques, much of their behavior is based on unconscious routines. Through reflection, individually and in groups, mediators can become more aware of their systems and consciously decide to refine and improve them.

Second, it tests the effects of an educational program to help mediators become more aware of their individual practice systems and to motivate them to develop more conscious and intentional techniques in their systems.

This results of this study support both premises. Attendees described varied combinations of multiple factors that they consciously use in their work. These factors go far beyond the ideas in traditional mediation theories. Attendees recognized elements of their system that they use unconsciously - on “auto-pilot,” as one attendee described.

Many of the attendees learned about the systems that they use – and that their mediation practice actually is a system. Mediators often focus solely or primarily on actions during mediation sessions. Real practice system theory includes actions before and after mediation sessions. This includes careful preparation for mediation sessions and reflection afterward.

Attendees were enthusiastic about discussing these issues during the program and many were interested in continuing to analyze their systems after the program. Some expressed interest in participating in ongoing educational practice groups.
Based on the findings of this study, a follow-up article – *Helping You Do The Best Mediation You Can* – suggests a practical program for mediators to improve their practice systems, individually and in groups. Hopefully, academics and practitioners will continue the action research cycle by conducting improved educational programs and studying their effectiveness.