



**AN INTERIM REPORT OF THE MEDIATOR SKILLS PROJECT:
ASSESSING AND SUPPORTING EFFECTIVE MEDIATION**



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AN INTERIM REPORT OF THE MEDIATOR SKILLS PROJECT: ASSESSING AND SUPPORTING EFFECTIVE MEDIATION

EXECUTIVE SUMMARY

In late 1996, the State Justice Institute (SJI) began collaborating with the William and Flora Hewlett Foundation and The University of Georgia to support a major applied research project designed to develop clear, empirically verifiable descriptions of what competent mediators do.

Court systems across the United States rely on mediators in various ways. Courts that contract for mediation services may outsource either to independent organizations (often nonprofit and community-based) or to individual private-sector mediators. Increasingly, court systems support in-house mediation programs. The Mediator Skills Project (MSP) is designed to meet the needs of courts for competent mediators, regardless of how the courts obtain access to mediation services. The project is designed to accomplish two principal goals:

- To delve deeply into what it means to be a competent mediator. By exploring mediator competence empirically, the project will fill a gap in our understanding of how mediators achieve competence and what court-serving dispute resolution (DR) programs might do to locate, train, and retain competent mediators.
- To translate understanding into practice by developing an integrated system of assessment tools that would enable court-serving DR programs to evaluate the strengths and weaknesses of new mediators, veteran mediators, and those seeking training to become mediators.

The SJI evaluation for the first year of the project noted that "the proposals being examined by this research are visionary, and replete with positive potential for mediation as a court-annexed dispute resolution reality for Georgia and for the United States. The methods of research and analysis in the current project are new, in large measure, and thus not certain to yield success. Experimentation with the data collection and information analysis in regards to the goals of this undertaking is merited. The prospective benefit to mediation, as well as to America's courts, is worth the risk of reputation, energy, time and money involved" (Reaves 1997:16).

Tolerance for the "cutting-edge" nature of the project is, one hopes, justified, given the MSP's significant accomplishments over the past year. With one exception, noted below, all of our major and minor data sets are complete; there is, nevertheless, a great deal yet to be undertaken.

- Interviews with DR program administrators have been completed, although we anticipate updating materials to reflect new programs and changes in administration.
- Data obtained from focus groups with mediators are secure.

- Data from the **Portrait of Georgia Mediators** survey have been returned. All of the quantitative data have been coded and entered into computer files, and most of the qualitative data have been differentiated and are ready for coding.
- The forty videotapes of mediation sessions have been created, the mediators have been debriefed once (although we anticipate a second, longer debriefing at the end of 1998), and the actors have been debriefed twice (one more time than anticipated).
- The statewide dialogue was completed and the data analyzed.

As the project unfolded in 1997, it became clear that connections between the **Portrait** data and the observations of trainers currently working in Georgia (one of the additional data sets we intended to collect) would be badly flawed methodologically. In addition, very clear operational definitions of mediator skills, tactics, and strategies (i.e., actions that can be clearly described and counted), needed to be firmly in place before observations of trainers could be undertaken. Rather than waste project resources and the time of trainers on premature observations, we decided to postpone collecting this data set until the first analysis of the videotapes is complete and the first draft of the assessment tools has been validated. By waiting, we will be able to see how trainers teach skills, tactics, and strategies; what they consider important; and what additional training materials might be needed to enhance the competence of mediators.

While the vast majority of the data await analysis in 1998, we were able to compare the demographic profile of this sample with the demographic information maintained by the Georgia Office of Dispute Resolution (ODR), a comprehensive registry of Georgia mediators. The comparison indicates that the **Portrait** sample is closely comparable to data provided by the ODR, implying that extended analysis of this data set will easily reflect the experiences, practices, and attitudes of mediators working across an entire state. As we check with other statewide offices, our sense that this is a rare, if not unique, data set is being confirmed. It will provide state court officers across the United States with a rare look at a broad sample of mediators currently serving courts.

In addition to successfully collecting a number of data sets, MSP team members made presentations before five national or statewide audiences; published two short articles and one issue of a newsletter; and created a Web page accessible at:
<http://www.cviog.uga.edu/Info/medskill/MSP.htm>.

Currently, the project is developing a nationally focused collaborative effort to move toward the goal of creating assessment tools. The Academy of Family Mediators (AFM), now a full partner in the project, will be co-managing the creation of the assessment tools. The Society of Professionals in Dispute Resolution, the Association of Family and Conciliation Courts, and the National Association for Community Mediation have also agreed to assist in the effort.

AN INTERIM REPORT OF THE MEDIATOR SKILLS PROJECT: ASSESSING AND SUPPORTING EFFECTIVE MEDIATION

Table of contents	Page
I. Introduction: What is the Mediator Skills Project (MSP)?	1
A. Specific questions we hope to answer	3
B. Anticipated Products	6
C. Usefulness of the products to court-serving DR programs	7
II. Data bases secured	11
A. The Portrait of Georgia Mediators	11
B. The videotapes	13
C. Additional data sets	14
1. Interviews with DR program administrators	15
2. Focus groups with mediators	16
3. A statewide dialogue	16
III. Data sets we hope to collect	18
A. Task diaries from mediators	18
B. Observations of trainers	20
IV. What we have learned thus far	20
A. The Portrait	20
1. Who does mediation?	21
2. Beliefs	22
3. How mediators serve	23
B. Statewide dialogue	24
1. Skills and styles	24
2. Assessment tools	33
V. An evaluation of current efforts	35
VI. The next steps	37
A. Initial analysis of the Portrait and the videotapes	37
B. Reconvening a national collaborative to develop assessment tools	38
Appendix	39
References	43
Endnotes	45

AN INTERIM REPORT OF THE MEDIATOR SKILLS PROJECT: ASSESSING AND SUPPORTING EFFECTIVE MEDIATION

I. INTRODUCTION: WHAT IS THE MEDIATOR SKILLS PROJECT (MSP)?

In late 1996, the State Justice Institute (SJI) entered into a collaboration with the William and Flora Hewlett Foundation and The University of Georgia to support a major applied research project designed to develop clear, empirically verifiable descriptions of what competent mediators do.¹ This effort is, in part, a continuation of earlier efforts to develop “an integrated system of assessment tools that would enable organizations to accurately analyze their mediation jobs, use validated assessments to select qualified mediators, and make more objective evaluations of mediator performance” (Russell n.d.). Equally important, the project explores in depth what it means to be a competent mediator, how mediators achieve competence, and what programs can do to retain the services of competent mediators.

Court administrators, administrators and staff of court-serving dispute resolution (DR) programs including non-profit community programs, people who train mediators, and national organizations that represent mediators agree that competent mediation is essential to sustain both (1) the legitimacy of mediation services offered through courts across the United States and (2) the integrity of the field of dispute resolution. But “almost every conversation about mediation suffers from ambiguity, a confusion of the 'is' and the 'ought.' This creates great difficulties when parties try to determine whether and how to participate in mediation, and when they grapple with how to select, train, evaluate, or regulate mediators” (Riskin 1996:7).

Lack of consensus about the practice of mediation creates difficulties for program administrators, trainers, mediators themselves and, ultimately, the public.²

Ambiguity leaves program administrators guessing when they need to assign a mediator to a particular case or choose a mediator to serve a specific DR program. Lack of consensus similarly hampers trainers' efforts to focus training on crucial skills. In the absence of comprehensive guidelines defining competence, mediators operate largely according to the traditions of their trainers, coupled with personal preferences. As a consequence, the public may receive incompetent mediation services or some other dispute resolution process masquerading as mediation.

Thus far, there is little agreement about what specific actions, tactics, or skill sets constitute competence, and there is even less empirically verifiable data describing those actions, tactics, and skill sets.³ Moreover, the relationship between what scholars know about mediation, what trainers teach, and what practitioners do is, at best, uncertain. New information produced by scholars often fails to reach mediators, trainers, and DR program administrators - in part because scholars and practitioners often speak different languages, read different publications, and have dissimilar views of what is important or interesting. Mindful of the historically tenuous connection between scholarly efforts and practice, the MSP hopes to forge a "missing link": to translate what is learned into easily accessible materials that DR program administrators, trainers, and mediators can use to develop, enhance, and sustain mediators' skills.

The first phase of the mediator skills project was designed to create interlocking data sets that would, in part, describe mediator behaviors and related information relevant to the roots of competence and ways of sustaining competence. During the early phase of the project, data creation was the top priority: as a result of the team's work, several related data sets are now primed for analysis.

The next step entails compiling clear, behaviorally grounded definitions of mediator tactics and strategies. The team is reviewing the existing literature for taxonomies of tactics and strategies, overlapping definitions of these terms, and unique proposals of mediator skills or competencies.⁴ Once we are satisfied that we have sufficiently catalogued behaviors indicative of skill, we will turn to the raw data to (1) search for indicators of skill and (2) explore factors associated with skill. Here we will examine antecedent factors-specifically, training, educational experiences, attitudes, and life experiences- that predate or occur in conjunction with involvement in the field of mediation. Indeed, one goal is to better understand the relationship between training and mediator skill.

A. Specific questions we hope to answer

Using the wealth of information obtained from our data sets, we plan to answer the following questions:

1. Looking across multiple court-connected DR programs that rely on different organizational models, who provides mediation services? Rather than base our profile on mediators serving a single program, we began by collecting data on select characteristics of mediators throughout Georgia. While the data bearing on this question might be bounded

geographically, we assume that the resulting picture will reveal patterns that will apply to other states as well.

2. Given that the study has reached a heterogeneous sample of mediators, how do these professionals - from different backgrounds, different communities, and different DR programs - define mediation? In particular, how do they define successful and unsuccessful mediation?
3. How are skills enacted, and are there discernible styles of mediation? To answer questions about skills and styles, we plan to compare data from forty mediators hearing one of two acted mediations.
4. If different styles exist, what sets one style apart from another? How do styles affect outcome?
5. What is the relationship between mediators' perceptions of their initial training, the skills mediators value, and mediators' preferred styles of mediation?
6. How do antecedent factors (e.g., demographics, personality, previous professional training) and practice environments (e.g., various DR program models and policies) interact with mediation training to shape skills and styles?

While our first task is to create empirical descriptions of mediator skills, including the tactics and strategies that constitute skills, the project ultimately poses a number of fundamental questions pertaining to mediator competency. For example, we suspect that a mediator's competence and perception of being competent may not only differ from one another but may also change over time. Edward Schwerin's (1995) study of both new and veteran mediators serving the Honolulu Neighborhood Justice Center found that initial training was intensely

powerful and had a significant impact on a new mediator's sense of efficacy, but that perceptions of efficacy appeared to wear thin over time.

Schwerin's explanation makes a lot of sense: during training, new mediators participate in lively discussions about how to mediate and enjoy a great deal of support from both peers and mentors - support that peaks during training but continues for months. It is just after this heady time and before trainees encounter difficult cases that their sense of competency peaks. Because the center calls on mediators as needed, contact with the center is typically sporadic: opportunities for peer support and feedback diminish, a sense of isolation builds, and the strain of working through difficult cases begins to undermine mediators' perceptions of their own skills. We don't know what the precise relationship is between actual and perceived competence, but thanks to Schwerin's research, we do know that a mediator's perception of competence probably changes as experience increases - and not necessarily in the direction we might predict.

Experience may not be the *sine qua non* of competency. For years, experience and personality (i.e., the premise that natural mediators exist) were considered the best predictors of competent performance (See Pearson, Thoennes, and Vanderkoi 1982). A few current studies suggest the same line of reasoning (See Shaw 1994:162-63), while others suggest that competence is a complex concept that is defined differently by mediators, clients, client attorneys, DR program administrators, and judges (Shaw 1994).

The many connections between skillful mediation and training experiences, life experience, and practice settings are complex - and this complexity is intensified by the fact that the expectations of mediation participants affect the mediator's performance. This project uses

three separate approaches to explore these sources of variation: First, team members worked with mediators, DR program administrators, and surrogate clients. Second, several data sets encompass either mediators' own perceptions of their skills or allow for researchers' observations of mediator behaviors. Third, one data set is based on questions that relate to competence, the potential roots of competence, and the resources that may support skills.

B. Anticipated products

The new data produced by the project will support both applied and theoretical products:

1. We are in the process of writing a series of papers and monographs to address the questions listed in Section I(B). These publications will focus not only on practical issues pertaining to mediator skills and styles, but also on theoretical questions about (1) the intersection of training and competence; (2) the relationship between background, skill, and style; and (3) the ways in which the communication process unfolds to produce various outcomes.
2. Using what we learn about behaviors fundamental to skill and style, we plan to create objective, easily administered assessment tools.
3. We plan to create a "master" training manual.
4. In the event of obtaining further funding, we hope to produce additional continuing education materials (e.g., videos, audio training tapes, and short newsletters) for mediators, trainers, and DR program staff.

C. Usefulness of the products to court-serving DR programs

The first product will shed substantial light on how mediator competence is shaped and supported. In particular, the analysis of mediator attitudes, personal and professional backgrounds, and training experiences may help program administrations develop support systems that can sustain mediators' sense of competency over the long term.⁵

Assessment tools, the second product, represent one way to qualify mediators - a need recognized by professionals in dispute resolution and court administration for some time (Gentry 1994; Russell n.d., 1993; SPIDR 1989, 1995; SPIDR Commission on Qualifications 1997; Test Design Project 1995; Wilkerson 1994). In other fields, the adoption of standardized assessment tools enhances professional standing, credibility, and marketability (See Gentry 1994). The project team believes that mediators would benefit similarly if a standardized test were readily available: assessment tools operationalize the slippery ideal of competency that is implied in the standards of conduct for mediators developed by various state court systems and private associations of mediators (Norton et al. 1992 for a review of the standards in California; the Florida Rules for Certified and Court Appointed Mediators were adopted in 1992 and are currently being revised⁶). In addition, information gleaned from an assessment may encourage mediators to reflect on their skills and style, ultimately suggesting avenues for professional development; this is a result that would be equally valuable to mediators working as independent, private practitioners and as adjuncts to court programs.

Although it is too early to say precisely how a set of assessment tools would be used, there are numerous potential applications. The current thinking of the project team is that (1) mediators would have primary access to assessment tools; and (2) they would have incentives to

take an assessment, regardless of whether they were in private practice or worked for a court-serving DR program. After completing the assessment, a mediator would receive his or her scores along with a debriefing to review skills, preferred styles, and deficits uncovered by the assessment.

Under such a system, DR program administrators would have the option of asking a mediator (or even a potential trainee) to complete an assessment. Court-serving DR programs might also ask veteran mediators to be reassessed periodically. Such arrangements would allow court-serving programs to obtain access to assessment information without having to bear the cost of administering, scoring, and revising a validated battery of tests. Administration on a state, regional, or national basis would address concerns about scoring bias (that might stem, for example, from familiarity between the mediators being assessed and the evaluators of test results).

Where resources can support such follow-up programs, client exit surveys and the observation of mediators by program staff are not uncommon. Both of these techniques provide insight into competence, but assessment results are more objective, more comprehensive, and less idiosyncratically linked to a single case. Either alone or in combination with information gleaned from exit surveys and observation, assessments would allow program administrators both to understand more fully what a particular mediator does and to maintain and enhance the skills of both novice and veteran mediators.

Another advantage of assessments is that they may reveal information that would otherwise be hidden. In most programs, for example, a small number of highly skilled mediators stand out, whereas others may be equally skilled but less conspicuous. If assessment scores revealed

that a mediator not otherwise prominent was especially skillful in a particular form of mediation, he or she might be recruited to a training team or as a mentor. Similarly, mediators proficient in one style might be encouraged, through focused continuing education, to expand their repertoire. Finally, administrators with access to several sets of scores for the same mediator would be able to quickly evaluate changes in skill and style, to correct questionable assumptions and practices before they become embedded, and to encourage mediators who might be experiencing a lack of empowerment (as described by Schwerin, 1995).

Like DR program administrators, trainers could obtain access to scores through mediators or trainees. Any trainer might ask potential trainees to take a preliminary assessment, but assessment scores might be especially valuable to court-serving DR programs with limited training resources. Knowing a trainee's potential might help trainers shape class presentations and mentoring options for new mediators: knowledge gained from assessment scores could thus be a springboard to even more productive training experiences. Similarly, whole classes might be constructed for veteran mediators with particular strengths or styles.

Whether they are affiliated with a court-serving DR program or offering training independently, trainers constitute the primary audience for the third product, a master training manual. A natural outgrowth of the observations of Georgia trainers and the creation of assessment tools, the manual maximizes the value of both. Plans for observations of Georgia trainers are discussed in detail in Section III(B). Once the assessment tools are in the validation stage, the team will have clearer definitions of the skills and knowledge characteristic of competent mediation and can then explore how these definitions are brought to life in real-world training settings.

The manual will not duplicate existing manuals but will attempt to fill gaps and offer suggestions for teaching techniques. The manual might be used to augment both basic and advanced courses in mediation. The continuing education materials that constitute the fourth product are beginning to emerge and could continue to be produced well into the future. The inaugural issue of our newsletter, Mediation Matters, acquaints readers with the scope and depth of the project; introduces the project staff; describes data sets and progress in data collection; summarizes the initial demographic analysis from the **Portrait**, and gives our Web page address: <http://www.cviog.uga.edu/Info/medskill/medskill.htm>.

We hope in the future to rely on both periodic newsletters and the Web page to disseminate information about our progress and findings and to obtain feedback from DR program staff and mediators alike. We also anticipate that DR program staff, trainers, and administrators will use both the newsletter and the Web page to keep posted about our emerging thinking on the key concepts of mediator skill and style. The more these simple access points can spark questions and raise concerns, the more useful the final products will be.

As we traveled the state conducting interviews with DR administrators and focus groups with mediators, we heard immediately that both groups want video and audio examples demonstrating particular skills and styles. Some of the materials requested would be relatively simple to produce. For example, we could create audiotapes for mediators to listen to on their way to a mediation. Such tapes might review ideas for building rapport, or provide explanations and examples of what it means to be impartial, nondirective, or a good listener. A product as simple as this would be useful without requiring mediators to commit an extended period of time. DR program staff could assign tapes to mediators periodically, as a way of reinforcing

good standards of practice. Moreover, such products might address some of the concerns uncovered by Schwerin (1995). For example, the fact that many people mediate irregularly and may feel detached after even a brief absence from practice.

Finally, if funding is secured in the distant future, the project team anticipates producing videotapes. Distinctions between various styles of mediation may become clearer if DR program staff, trainers, mediators serving courts, and mediators in private practice could see the different skills, tactics, and actions illustrative of various styles of mediation.

II. DATA BASES SECURED

In the past year and a half, the MSP team has focused primarily on designing data-collection strategies and undertaking data collection.. The result is an array of information awaiting analysis.

A. The Portrait of Georgia Mediators

The **Portrait of Georgia Mediators** survey - one of two major data sets - provides a detailed description of who mediates for our courts (including mediators in private practice and mediators serving state agencies). The **Portrait** looks at (1) mediators' professional and demographic backgrounds; (2) their values and aspirations as mediators; and (3) their training histories and personality profiles. The **Portrait** also examines mediation practices in several contexts (e.g., various court programs, government settings, private practice) that might shape what mediators report they do. The survey also includes questions on the philosophies or

stories that may guide a mediator's work.

The **Portrait** extends Schwerin's (1995) analysis to a larger population of mediators trained by various trainers and working in various contexts. It adapts several measures used by Schwerin to test (1) preferred mode of handling conflict; (2) self-esteem/personal efficacy; (3) desire for control; (4) locus of control; (5) need for social acceptance; and (6) level of political involvement.

In October 1996 a total of 1,025 surveys were mailed to approximately 95 percent of the mediators in Georgia, who had been identified through the Georgia Office of Dispute Resolution, the state merit system, and several private mediation firms. Nearly all the surveys (approximately 1,000) were mailed to mediators serving courts, and the remaining surveys were sent to mediators serving government agencies; this smaller group was included to provide a comparative basis for analysis.

By spring 1997, 364 surveys had been returned, a gratifying return rate given the scope and length of the survey (twenty-five pages). Some mediators noted that they had taken a day or two to complete the survey; others worked on the survey on and off for over two weeks.

All of the quantitative data - well over half the questions on the **Portrait** - have been coded, validated, and converted into a machine-readable (SPSS) format. Raw data from the qualitative questions on perceptions of skills have been entered into a file. Content coding will be undertaken after the definitions of skills and the tactics or strategies that constitute skills are made final.

On the basis of **Portrait** data, we assembled an initial demographic analysis and presented it during our statewide dialogue at the 1997 national conference of the Academy of Family

Mediators and at the annual meeting of the state bar association of Georgia; we also synopsized the demographic analysis in Mediation Matters and on the project Web page.

B. The videotapes

A second major data set consists of forty videotapes of mediators "hearing" either a domestic or a neighborhood case. The domestic case is typical of cases in both superior and juvenile court; the neighborhood case could have been filed in a state, magistrate, or juvenile court. All of the tapes are finished, the mediators have been debriefed once, and the actors have been debriefed twice.

This year-long data-collection phase began with the creation of divorce and neighborhood dispute scenarios (complete with histories, factual information, characters, and both overt and hidden agendas). The project team then auditioned and hired professional actors to play the disputants in the two cases, coaching them to develop and maintain consistent characters as the basis for improvisation. Finally, the team brought in mediators from across the state to mediate one of the two disputes. Volunteers for the tapes were solicited early on, when focus groups were being conducted with mediators, and again when the **Portrait** was mailed. Eighty mediators volunteered, and forty were carefully selected to ensure that the sample represented every region of the state, a variety of trainers, gender and racial diversity, and a range of mediation experience.

The only time limit we imposed on the mediators was to ask that the dispute reach a logical conclusion on the day of the taping. Our flexibility, coupled with the willingness of the volunteers, resulted in tapes closely approximating actual mediation. An average tape is four

hours long; a few sessions lasted six to seven hours. We were gratified to receive feedback that the sessions were very realistic: during debriefing, most mediators reported that the disputes were quite similar to what they might encounter in their work, although a few noted that the neighborhood case seemed particularly complex.

We look forward to analyzing the tremendous variety in outcomes and processes. The actors worked very hard to ensure that the motivations for their characters remained consistent from one mediator to the next; at the same time, they tried to respond to each mediator as if mediation were a new experience. The actors did not follow a set script or strive for a particular outcome. Although the basic characters remained the same, how each character was expressed in the course of the session depended on questions the mediator asked and on the mediator's strategies for organizing and managing communication. During debriefings, the actors noted that although they would begin a session ready to improvise from an established persona, the presentation and expression of that character's feelings, experiences, and beliefs could go in vastly different directions, depending on the mediator.

C. Additional data sets

During early 1996, a letter of introduction mailed to every mediator registered with the Georgia Office of Dispute Resolution, to trainers, and to DR program administrators alerted recipients that the project was underway and that the research team was setting up focus groups across Georgia. The research team began collecting data in the field during March and April: conducting interviews with ADR directors, collecting program policies, and conducting fifteen focus groups with mediators. Construction of the **Portrait** benefitted from focus group input,

and we anticipate that subsequent analysis of the **Portrait** will be enhanced by information gleaned during both the focus groups and the interviews with DR program administrators.

1. Interviews with DR program administrators

Almost all of the court-serving DR programs in the state participated in interviews and encouraged their mediators to participate in focus groups and complete the **Portrait** survey. The numerous DR programs in Georgia vary widely in policies and structure, so we asked a number of questions to document this diversity, including the following: number of mediators serving the program; whether the mediators were trained as a single group or by a variety of trainers; what types of cases the mediators hear; whether the mediators hear more of one type of case than another; what program policies governed referral of cases to the program; how cases are scheduled; what fees are charged to clients; how mediators are paid; whether mediators provide feedback to the program after cases are completed; where most mediations are held (e.g., in program offices, in attorneys' offices, in space provided by mediators); how program administrators know that a mediator is or is not effective; what factors support mediators' success (e.g., program guidelines, support of the local bar or local judges); and what factors limit mediators' effectiveness. Data from the interviews and from policy information provided by program administrators have been transcribed for analysis.

2. Focus groups with mediators

Fifteen focus groups around the state introduced the project to mediators and elicited their ideas about skills. Each group was asked the following questions: How do you know when you are doing a good job? How do you know when you are not doing so well? What factors support your success as a mediator, and what tends to limit your effectiveness? Each group discussion was audio taped, and the tapes have been transcribed. Analysis of focus-group results will inform coding schemes for comparable questions in the **Portrait**.

3. A statewide dialogue

On June 12-13 1997, nearly one hundred Georgia DR program administrators (n = 14, all from court-based programs), trainers (n = 4), and mediators (n = 78) met with the project team and nine of the project consultants at the Georgia Center for Continuing Education. Our objectives were (1) to let people know what we are doing and what we are beginning to learn; (2) to verify the limits of the **Portrait** sample; (3) to spark dialogue about skills and the implications of various styles of mediation; and (4) to test the degree of tolerance for assessment tools.

In general, the meeting met the needs of both the project and the participants. On an overall evaluation using a five-point scale, participants rated the value of personal participation as 4.13, interaction with colleagues as 4.15, informal conversations between participants as 4.46, and knowledge gained as 4.00.

After the team presented information on the project - including the **Portrait** - participants engaged in small-group discussions of skills and style that were lively - and, as one participant noted, not nearly long enough. Our presentation on mediator style seemed to validate

participants' sense that there are several ways to mediate competently. In the words of one participant, mediation "is a revival of an ancient system, but as a contemporary profession we get to help mold it and determine what it will become." Even so, ambiguity about what constitutes a legitimate style engenders tension, and the tension surfaced when small groups found it difficult to reach consensus on the relationship between skills and style.

Since the mid-1990s, there has been a growing sense that assessment of quality is necessary, and both mediators and DR program administrators have become increasingly willing to embrace assessments. We asked dialogue participants to consider the challenges of developing and administering valid assessment tools that would reflect not only basic skills and competencies but also those that were appropriate to a variety of content and practice settings. Participants were open to the discussion of assessments: they specifically remarked that our discussion of the historical context provided an important grounding for the dialogue; they also expressed appreciation for the presence of experts from other parts of the country.

For much of the dialogue, participants interacted in heterogeneous groups (i.e., trainers, mediators, and DR program administrators worked together). But to tease out concerns about assessments, we asked participants to work in homogeneous groups. Although the idea of assessment tools evoked some similar responses among all three groups, each constituent group also had its own particular concerns. The portion of the dialogue focused on assessments was particularly helpful for the project team because it provided insight into current concerns in the field (See the Appendix for a detailed listing of feedback from the small group discussions).

III. DATA SETS WE HOPE TO COLLECT

During the initial phase of the project, the team has come to realize that the creation and analysis of work diaries should precede the development of competency exams. We also feel that the time of both the project team and the Georgia trainers would be better spent by postponing observations of trainers until after an assessment is well on its way to validation.

A. Task diaries from mediators

Portrait and videotape data are the basis for our analysis of mediator skills and styles, which we expect to lead to the development of a set of assessment tools in a year or more. For the purpose of test development, diaries of the tasks mediators accomplish during a mediation would provide additional grounding for measures of skill and knowledge required to be a competent mediator.

The creation of work diaries is a common step in the testing industry, and would have enhanced the pilot work done by the Test Design Project and the Mediator Skills Assessment Program (See Russell n.d., 1993). Initial research for the development of the measures created by the Test Design Project included the articulation of knowledge, skills, and abilities associated with a mediator's work (See Russell 1993), but stopped just short of collecting diary data.⁷ If the field is to develop a test or set of tests that are comprehensive, fair, unbiased, and able to withstand legal challenges, creation of more comprehensive and detailed lists of the activities encompassed by mediation would corroborate analyses derived from the two MSP's other major data sets and ensure the overall validity of the resulting tests.

Although the **Portrait** survey reports mediators' perceptions of what constitutes good or bad mediation and describes what mediators do, this information cannot automatically be converted into evaluations of skill or competence. Similarly, data from the focus groups, interviews with DR program administrators, and the statewide dialogue only suggest what is good or bad mediation practice. Although the existence of multiple data sets allows us to look for consistent patterns, the descriptions derived from these data are necessarily global and lacking in detail.

The videotapes, in contrast, allow for an abundance of detailed descriptions of skills, strategies, and tactics from a researcher's point of view. However, the videotapes will not, for example, yield answers to questions such as: Did the mediator feel a particular action was effective? What was the intent of an action? Why did he or she act a certain way?⁸ We feel that if we are going to create instruments that court-serving DR programs across the United States can rely on, we need to take the additional step of obtaining work diaries. This step represents an additional time commitment, but with the help of colleagues across the country, we feel it is possible with a reasonable amount of effort. Over the past several months, the project team has begun collaborating with the Academy of Family Mediators to co-manage the development of diaries from mediators working in a variety of contexts across the United States. With the guidance and participation of other major organizations (e.g., the Society of Professionals in Dispute Resolution, the National Association for Community Mediation, and the Association of Family and Conciliation Courts), the overall result will be a highly accurate and reliable instrument.⁹

B. Observations of trainers

Once the creation of the assessment tools has progressed to the validation stage, an additional - and final - data set will be obtained through observations of the basic training programs that serve the majority of mediators in Georgia. Eight programs offering basic mediation training have volunteered for observation. To provide a better understanding of how various models of basic mediation training reinforce key skills associated with competence as measured by the assessment, these data will be compared to the assessment instrument in development.

Rifkin (1994) suggests that the initial training a mediator receives stamps his or her style indelibly. Rifkin has also remarked on the poor communication between the training and research communities. We hope to describe empirically whether and how training imprints style and skill. We will then share our findings with trainers across the country in hopes of improving the scope, quality, and relevance of training experiences.

IV. WHAT WE HAVE LEARNED THUS FAR

A. The Portrait

The summary of initial findings that follows is based on the 364 responses received from the **Portrait** survey.¹⁰ More complex results, slated for analysis in 1998, will yield an unprecedentedly comprehensive picture of who mediates for an entire state. The **Portrait** looks at who mediators are, where they mediate, why they mediate, how they got into mediation, and why they stay. It also looks at mediation training experiences and at select personality dimensions. The survey is not only a first for Georgia but for the field of dispute resolution.

Some people might question the appropriateness of generalizing for an entire state on the basis of a 36 percent response rate. In fact, this is an acceptable response rate for any mail survey, and especially for one of this size (twenty-five pages, including a number of essay questions). In addition, we had the opportunity in June 1997 to compare our statistics with data on registered mediators: Ansley Barton, director of the Georgia Office of Dispute Resolution, was kind enough to provide summary statistics on mediators registered through her office. The profiles are extremely close: with a few small differences, noted below, we seem to be right on the mark in obtaining a representative sample of mediators registered in the state.¹¹

1. Who does mediation?

The **Portrait** depicts Georgia mediators as primarily white, middle-class to upper-middle-class. Almost equal proportions of men (51 percent) and women (49 percent) mediate. Eighty-nine percent of respondents are European American (white, non-Hispanic), and 7 percent are African-American. The mean age is fifty, and the gross annual household income for 52 percent of respondents was more than \$75,000. (While this figure may seem high, these households may include two earners - and, as will be discussed below, a sizable proportion of the mediators in the sample have law degrees.)

Mediators might be described as "regional": 61 percent grew up in the Southeast. Thirty-six percent were raised in a suburban environment, 30 percent in an urban environment, and 20 percent in a rural environment. The suburban-urban-rural distribution seems optimal for Georgia, considering the geographic spread of DR programs and the concentration of cases in the Atlanta metropolitan area.

Mediators tend to be upwardly mobile: for example, although 44 percent of those surveyed had completed a law degree, they were predominantly first-generation lawyers:¹² only 5 percent of the fathers (and, not unexpectedly, only 1 percent of the mothers) had law degrees. Eight percent of respondents had completed a bachelor's degree only, whereas 21 percent had completed an M.A. degree, 6 percent had completed a Ph.D. or M.D., and 7 percent held more than one graduate degree. Unsurprisingly, legal-judicial occupations are the most common among our respondents, followed by business, education, social services, and administrative/executive.

2. Beliefs

Approximately one-third of Georgia mediators (38 percent) see themselves as political moderates, while 23 percent see themselves as conservatives and 28 percent as liberals. Very few respondents indicated strong liberal or conservative leanings. Sixty-four percent are Protestant, 11 percent Catholic, 10 percent Jewish, and 3 percent agnostic; 11 percent noted some other belief system. Religion and/or a spiritual component in life is very important to 54 percent of the participants, fairly important for 31 percent of the participants, and not important to only 11 percent of the group.

When mediators were asked about the importance they assign to various outcomes, a pragmatic altruism surfaced. Seventy-one percent consider meeting everyone's needs to be important or extremely important, and 60 percent felt client satisfaction was important or extremely important. Only 26 percent felt that a signed agreement was important or very important. This response might differentiate community mediators (who write full agreements

for signatures) from mediators who work primarily out of superior courts (where some mediators may write notes for a memorandum and then delegate the drafting of an agreement to the advocate attorneys). Only 14 percent felt social transformation was important or very important, suggesting that altruism that reaches beyond one's immediate community may not be as influential.

The importance of pragmatic altruism surfaced again when mediators were asked what sustained their interest in mediation. Helping people solve their problems in a cooperative way is the single most salient reason mentioned for continuing to mediate: 97 percent of the sample rated helping as highly sustaining. Serving one's community is also important (46 percent ranked it highly salient, and an additional 15 percent characterized it as being only slightly less salient). Support from colleagues, a need to build a career, and/or a desire to add to an existing career appear to be much less important reasons for continuing to mediate.

3. How mediators serve

Most mediators (47 percent) mediate for public agencies; 24 percent maintain a private practice, and 11 percent mediate for government agencies. Mediators work almost exclusively as solo practitioners: almost half (49 percent) do not co-mediate, and of those who do, 30 percent are most likely to co-mediate only one to three times a year. Ninety-one percent of survey participants considered themselves active (inactive was defined as not having mediated in the preceding five years). Not surprisingly, mediators would like to be more active. The average amount of time spent in mediation per month was about 13 hours, and the average length of time since the last mediation case was 4.5 months. However, mediators would like to

mediate an average of 36 hours per month.

B. Statewide dialogue

At the statewide dialogue held in June 1997, participants exchanged views on mediator skills and styles and voiced their reactions to the idea of assessment tools.

1. Skills and styles

As we create analytic codes for the **Portrait** and videotape data, information on skills and styles gleaned from the statewide dialogue will be particularly helpful. Previous efforts to define mediator skills have relied on small, homogeneous samples of mediators or on expert opinion. These are both logical choices, but we wanted to see how a broader sample of mediators (who probably do not see themselves as experts) define the skills that characterize competent mediation.

When participants were asked what actions represent skillful mediation, the responses indicated that, like many researchers and scholars of DR, mediators tend to define skills in abstract terms. Participants noted a number of values they associate with skillful mediation; they also provided lists of behaviors that suggest useful avenues of analysis, but that will have to be translated into considerably more specific terms if they are to be incorporated into coding schemes for the **Portrait** and videotape data. The Appendix summarizes dialogue participants' descriptions of (1) values and behavior characteristic of competent mediation; (2) behavior characteristic of lack of skill in mediation; and (3) factors that can make skilled performance difficult.

As the project team continues to wrestle with defining skilled mediation, we have realized that there are competing ideas about what "real" mediation is - different views of what mediation should be; what mediators should attend to; and how best to accomplish the goals of mediation. We think it is important to look at skill in the context of a particular definition of mediation. This is not a new idea: Riskin (1996), for example, proposed two styles - facilitative and evaluative. The team is currently working with three styles: structural, individualistic, and relational. We are defining style as a general script or template that assists us to make sense of the world and decide how to act in it. To take a closer look at how styles are played out in mediation work, let's examine three mediators:

Sam, a veteran lawyer, immediately saw the promise of mediation when he took part in a labor negotiation. As an attorney, he was familiar with the law and could help participants understand their positions in light of what a judge might think. He wholeheartedly agrees with most mediators that to calmly and rationally work things out (rather than going to court or having work stoppages) is a great boon to the legal system: mediation saves time, expense, and emotional turmoil.

Sam truly enjoys being able to solve problems. Being a mediator is a source of much pride and enjoyment for him. He is, however, concerned about non-lawyers serving as mediators: in Sam's view, without an understanding of the system of rules and regulations, these mediators lack the foundation to guide them to an appropriate settlement.

Janine, a human resources associate at a large public agency, became interested in mediation when she was sent to mediation training as part of her job. Janine saw that by providing an opportunity to create a win-win solution that will meet or maximize everyone's needs, mediation can be empowering to people in conflict. She feels most successful when she discovers underlying needs and interests and helps parties translate them into a creative and useful solution. To prevent the exchanges between the parties from descending into argument, Janine stays closely in charge, redirecting the parties as necessary to maintain the focus on problem solving. While she does this, though, she tries to stay neutral. Janine believes that unless the parties' personal needs and interests are considered, they will simply resurface - and the mediation will be no more than a band-aid. Janine met Sam once at a mediators' conference and feels that he just doesn't understand what the true spirit of mediation is all about.

During the several years that **Burt** has been a mediator, his style has changed. In the past, he used subtle control to determine which issues got on the table and which parts of issues got highlighted. But he gradually began to think that people's needs and interests were not necessarily set in stone - that maybe they have more to do with the participants' relationship in the moment and even their relationship to the mediator. Burt began focusing on how people talked and looking for opportunities to expand the parties' perspective of themselves, the other party, and the relationship. He noticed that he still often "got" agreements, but they seemed to be much more unexpected, drawing heavily on the parties' influence and the ways that issues were "talked into being" in the moment-to-moment exchange of mediation.

We would view Sam as mediating according to a structural style (See Table 1). At a deep level, what helps Sam make sense out of being a mediator is the notion that mediation occurs within the context of powerful structures with specific codes and policies: in Sam's view, individuals do best when they are aware of and conform to the order of these structures.

We would classify Janine as operating from an individualistic style. In Janine's view, policies and codes do not always reflect what diverse individuals might want for their lives. In her mediation work, she focuses on individuals' specific interests and needs rather than on structures. Because mediation is flexible, allowing the mediator to listen to each participant's story, the mediator can help move the parties toward an agreement that is more equitable because it is based on individual needs and interests.

Table 1: Three styles of mediation.

	STRUCTURAL STYLE (dialogue centers on external criteria)	INDIVIDUALISTIC STYLE (dialogue centers on individual needs)	RELATIONAL STYLE (dialogue centers on how people relate to each other in the context of the conflict)
	Rule-based negotiation	Need-based negotiation	Relationship-based negotiation
World view	The mediator frames the exchange by placing it in a legal or administrative context. A great deal of meaning is attached to slowly changing (apparently static) codes, rules, and pre-existing structures that supercede individual interests.	The mediator sees participants as autonomous agents who relate to each other on the basis of individual and personal needs, drives, and interests. Individual needs and interests predate the situation that provoked the mediation. Needs are relatively fixed, but they can be clarified.	The mediator defines the relationship and any interaction between participants as key to the mediation. A person's sense of self and what is defined as a need or interest emerges within the context of relationships. The relationship serves as the basis of the conflict and the resolution.
Definition of problem Primary interest	The problem is one of matching a specific situation to the proper set of rules or codes that describe how a comparable dispute would be resolved outside of mediation.	Individuals have problems with others when overlapping personal needs, interests, or values contradict; that is, when one party perceives his or her needs being threatened or limited by the needs and values of another.	Conflict is not a problem per se but a form of relationship. Problems are not static entities but are defined in a relational context that becomes culturally defined.
View of conflict	A problem to be eliminated.	A problem to be eliminated.	An opportunity for greater understanding, clarity, or growth.
Emphasis in the negotiation	Facts and policies.	Individual needs and concerns.	How people relate to each other.
Horizon	Short term: "Get it done."	Intermediate: "We can work it out."	Long-term: "We are interdependent."

	STRUCTURAL STYLE	INDIVIDUALISTIC STYLE	RELATIONAL STYLE
View of how structures and people relate	The individual is not as important as the system, rules, and policies that organize how individuals behave and how relationships are defined. The system or structure is a defining principle, and behavior either functions according to structural requisites or is defined as dysfunctional. A "top-down" view of the world.	People are motivated by personal goals, needs, and desires that are self-contained; relatively stable from one context to another; and shape relationships with others and motivate independent action. People are not dominated by the social structure.	People define who they are in fluid ways that emerge differently in different contexts. The individual produces the context; the context does not exist outside the negotiation. A "bottom-up" view of the world; think of the old question about the tree falling in an empty forest and whether it would make a sound: here the answer would be no.
Descriptors	Codes Either/or Right/wrong Institutional rules Conformity status quo.	Humanism Individualism Self-interest Personal growth Individual rights Transactions.	Actual interactions (verbal and nonverbal) How people work together How the mediator works with the participants, creating a context for defining the conflict and the relationship within the mediation.
View of power	Structures control people. Individuals are not free to decide without considering the structures. People who conform to rules borrow power (or legitimacy) from the social structure.	Individuals can change their context through self-awareness and competition. There are people who are more or less powerful independent of the situation.	Power is always changing and changes in the context of the interaction. While people may bring some sources of power into a mediation, the actual negotiation creates an ever-shifting power configuration.
Mediator's role	Interpreter of the structure; expert. Hierarchical.	Needs assessor; distributive or integrative problem solver. Hierarchical	Participant in the relationship; makes sense of the conflict along with the other people involved. Not estranged from participants (i.e., participants are not "the other").

Burt can be described as operating from a relational orientation. Rather than identify unchanging needs within participants, he focuses on how people talk to each other and understand themselves and one another through talk. Undergirding this style is the belief that we produce meaning with and through each other, in moment-to-moment interactions, and that mediation can be a place to create new meanings that lead to a greater sense of self-determination and understanding of the other.

If we assume that there would be more or less skillful mediators within the context of different definitions or conceptions of mediation, this implies that a mediator with a structural style should not necessarily be judged by the standards that would apply to a relational or individualistic style. On the other hand, only one style may not be enough: one of the definitions of skill in mediation may include the ability to apply different styles to different contexts. One goal of our research is to explore such questions. For example, are certain styles of mediation a better “fit” with certain mediators' personalities, work environments, or mediation contingencies?

For project team members, probably the most difficult task of the dialogue was to elicit descriptions of specific actions or behaviors that participants associated with different styles of mediation. Participants expanded our thinking on this topic by suggesting that skills might manifest in a different way within a style, depending on whether a mediator relied on directive or nondirective tactics. Examples of directive tactics include asking the same questions over and over, setting clear boundaries and ground rules, leading the discussion, falling back on court mandates, and using a lot of reality testing. Examples of nondirective tactics include reflective listening, actions that empower the parties and open new avenues of understanding,

making adjustments in response to the parties' inclinations (i.e., being less dependent on ground rules or a linear model of mediation), and accepting an open-ended outcome. Taking these suggestions into account, we revised our chart of styles (See Table 2).

The definition of skills and styles is very much a work in progress. Data from the statewide dialogue that pertain to skill and style are more ambiguous than data that pertain to skill alone or to the assessments. While participants understood the three orientations in theory, it was difficult for them to talk about specific behaviors that would fall clearly into one of the three categories, especially once they had begun to focus on how the expression of style may be affected by directive and nondirective tactics. Perhaps the content of a statement indicates which style a mediator is using, and communication tactics indicate whether the mediator is being directive or nondirective. At this point we have no answers, only more questions. The team is currently looking into previous research and anticipating the first glimpse of the videotapes.

As the project team develops coding schemes for the data, ambiguity about style and skill will present an exciting challenge. The videotapes will serve to anchor our analysis of style, since distinctions between directive and nondirective tactics in each of the three styles may depend on tone of voice, timing, and the actual wording of statements made by the mediators.

Table 2: Examples of selected skills or tactics used within the framework of three styles of mediation.

	STRUCTURAL STYLE	INDIVIDUALISTIC STYLE	RELATIONAL STYLE
Directive	<p>Establishes rules before mediation begins.</p> <p>Refers to rules.</p> <p>Predefines the timing of the process (e.g., the length of opening statements).</p> <p>Sets the agenda ahead of time.</p> <p>Enforces rules.</p> <p>Uses fixed seating arrangements.</p>	<p>Relies more on caucus than on dialogue.</p> <p>Might use statements like "I am here to help you reach an understanding of your needs."</p> <p>Might use language in an opening statement like "State what you heard" - or, later, "Do you want to continue the conflict?"</p>	<p>Asks what a participant's stake is in the relationship.</p> <p>Assumes that the relationship is of utmost importance.</p> <p>Asks about feelings.</p>
Non-directive	<p>Refers to established norms (e.g., ADA regulations, contracts, torts, societal norms, references).</p> <p>Attends to facts rather than feelings.</p> <p>Reframes issues on the basis of facts or guidelines.</p>	<p>Might ask: "Is there something you can do?"</p> <p>Refers to the future.</p> <p>Comfortable with silence.</p> <p>Might ask "What do you need to be comfortable with a resolution?"</p>	<p>Uses therapeutic tools to uncover hidden agendas.</p> <p>Allows feelings to emerge naturally, then lets them evolve.</p> <p>Reframes feelings and mutual concerns.</p>

2. Assessment tools

DR program administrators, trainers, and mediators alike offered a number of reasons to support the creation of assessment tools. One general theme was that a well-constructed set of assessment tools could provide much-needed clarity within the field by (1) distinguishing mediation from other forms of dispute resolution; (2) defining what constitutes good mediation; and (3) identifying the essential knowledge that any mediator needs. Thus, an assessment could create a benchmark for people wanting to become mediators and for mediators wanting to know whether their work falls within the parameters of acceptable practice. But an assessment could be more than a benchmark: by encouraging short- and long-term skill development and enhancement, it could serve as a catalyst, raising standards of practice both for individuals and for the entire field.

Assessment tools would also support greater professionalism by (1) increasing the professional credibility of mediators (a point underscored in Russell, 1993), and (2) providing some protection when liability issues arise or grievances are filed. Standards of conduct would be characterized by greater objectivity and precision.

While participants listed several reasons in support of assessments, there were also concerns. Some wondered whether the field is being pushed to act, or whether assessments may reduce diversity among mediators by defining competence narrowly or by holding up one model of mediation as the only example of competence. Groups posed questions such as these: Who sets the standard? How do you assess mediators from radically different backgrounds? How do you create an assessment that is culturally sensitive? Some expressed concern that assessment tools might favor lawyer-mediators to the exclusion of mediators from other

professional backgrounds; others were concerned that fees charged for administering an assessment might have exclusionary effects.

The three constituencies had unique ways of looking at assessments. **DR program administrators** welcomed more support for ongoing quality assurance, noting that assessments might provide a proactive means of objectively verifying skills and competency when it is necessary to select a new mediator or assist a veteran. They also noted that assessments might help program staff discover low-profile but highly skilled mediators. Program administrators' concerns focused on resources and political power: how could the DR program pay for administration and scoring, and what would be the consequences of poor performance?

Trainers welcomed, in theory, the idea of assessments as aptitude tests that could provide baseline information on key abilities like problem solving and analytical reasoning (a point underscored in Russell, 1993). Trainers also noted that assessments could strengthen the entire training process by providing a natural ending place for training and mentoring experiences. Finally, trainers said that they could use information from assessments when developing basic and advanced curricula. The only disincentive trainers noted was that for trainers working in the private sector, the cost of administering assessments might reduce class size and increase overhead expenses.

Of the three constituencies, **mediators** were the most wary. Mediators wanted to know more: who the gatekeepers would be, whether the board creating the assessment tools would be diverse (i.e., would include consumers, as well as mediators from a variety of professional and ethnic backgrounds), what would prevent the assessment process from being co-opted by state or national bar associations, how the objectivity of evaluators would be ensured, and

whether the exam would include a mix of testing formats. The need for assurances that scoring would be accurate and unbiased appeared to be rooted in concern that the assessment tools would fail to take cultural diversity into account. One final concern that mediators expressed was about cost.

On the positive side, mediators saw that successfully completing an assessment might provide protection as well as being a source of pride. They also felt that assessments could provide personal benchmarks while helping raise overall standards of professional practice. Finally, mediators felt that if they were constructed in such a way as to acknowledge diverse ways of mediating, assessment tools could support diversity in approaches to mediation. The project team welcomed feedback from all three constituencies: their remarks highlight important considerations for the development of assessment tools.

V. AN EVALUATION OF CURRENT EFFORTS

During the grant year, SJI supported an independent evaluation of the project by Richard Reaves, Institute of Continuing Judicial Education, The University of Georgia. In the evaluation, Reaves notes that the proposed products of the project should strengthen (1) the referral and/or assignment of mediators to specific cases; (2) the skills of mediators serving courts; (3) both initial and ongoing training of mediators; and (4) case triage. Reaves (1997) concludes that patterns gleaned from the **Portrait** data may assist (1) trainers as they assemble training classes and (2) court-serving DR program administrators as they assign mediators to cases. MSP agrees that **Portrait** data, by providing information on the styles, preferences, and

propensities of a large sample of mediators, may allow trainers and DR program administrators to “know” their mediators better.

Reaves also noted that **Portrait** data will help confirm or disconfirm conceptions about who mediates for our courts. While the MSP will not be able to comment on trends (e.g., track changes in the field of mediation over the past fifteen years), we hope that our work will encourage other state court systems and statewide mediation organizations to begin collecting comparable data for ongoing analysis.

The evaluation also concludes that the forty videotapes will allow the project team to describe and catalogue examples of mediation skills and to develop a behavioral typology of mediator styles for use by DR program staff and trainers across the country. We would like to add that data from the **Portrait** and the mediators’ task diaries (noted in Section III(A) of this report and not envisioned at the time of the evaluation) will help verify the validity of the descriptions provided by the videotapes.

The evaluation noted that the newsletter, the Web page, and the presentations at various conferences and professional meetings will assist information transfer. The MSP would like to add the statewide dialogue to this list of opportunities for information transfer.

Reaves's next two conclusions pertain to the observations of trainers and the production of the master training manual. The evaluation noted that our observations of trainers have the potential to positively affect training packages across the United States but that this work has yet to begin. MSP adds that, as noted earlier, we do not anticipate beginning to observe trainers for several months.

The final point of the evaluation, notes that although assessment tools will emerge in

the future, DR program administrators will quickly gain valuable knowledge about their mediators from analyses of the **Portrait** data anticipated in 1998 and 1999.

Finally, although the evaluation notes the need for time lines specifying deliverables, it also notes that it would be harmful to expect successful completion in three years or less:

Moving the data-collection and analysis aspects of the project too quickly to operational conclusions will undermine both the research and the results. . . . Experimentation with the data collection and information analysis in regards to the goals of this undertaking is merited. The prospective benefit to mediation, as well as to America's courts, is worth the risk of reputation, energy, time and money involved (16).

VI. THE NEXT STEPS

A. Initial analysis of the Portrait and the videotapes

Any analysis of a complex data set typically progresses in steps, and this project is no exception. Analysis of the basic demographic data is complete, so our next task is to examine personality items in the **Portrait**. This second level of analysis bears on the first question posed by the project - namely, who provides mediation services? The analysis will paint an intricate **Portrait** of who mediates, including respondents' preferred mode of handling conflict, self-esteem/personal efficacy, desire for control, locus of control, need for social acceptance, and level of political involvement.

The next step in the analysis is at the heart of the second question posed by the project: How do professionals from different backgrounds, different communities, and different DR programs define mediation - and, in particular, successful and unsuccessful mediation? To obtain a better sense of the relationship between skill, style, and background, we will analyze

items in the **Portrait** that define mediators' perceptions of whether a mediation is going well or foundering; we will also look at patterns and philosophy of practice against patterns of personality.

We will be working with the forty videotapes while we begin analysis of the **Portrait**. A coding system will be developed based on our definitions of skill, style, strategy, and tactics. By the end of 1998, we hope to begin answering question three: How are skills enacted, and do discernible styles of mediation exist? The next step will be to pull together the analysis of the **Portrait** and the videotapes to expand even further our understanding of how a mediator's background, training experiences, and personality contribute to competent mediation. We anticipate this to be a complex analysis that could occupy the better part of 1998 and 1999.

B. Reconvening a national collaborative to develop assessment tools

National organizations contributed to the development of the Test Design Project instruments and to a pilot job-analysis questionnaire funded by the National Science Foundation and the National Institute for Dispute Resolution. The Mediator Skills Project, an outgrowth of these earlier initiatives to develop assessment tools, reconvenes most of the organizations that contributed to the earlier efforts. After discussion of how MSP and the Academy of Family Mediation (AFM) might collaborate on the development of a set of assessment tools, AFM made a successful request for two years of funding to support their portion of the effort.

Additional funding will be needed to complete this process, but even before additional funding is secured, MSP will be working with AFM to develop, disseminate, and analyze work diaries produced by mediators across the United States.

APPENDIX

Values associated with skillful mediation include the following:

- Respect for all parties, regardless of how different they are from the mediator
- An accepting, nonjudgmental perspective
- An understanding that if people have a problem, it is important
- Trust in the process
- Belief in empowerment

In interactions during a mediation, a skillful mediator will show

- Respectfulness (e.g., thanking people for their investment of time and effort)
- A calm demeanor
- A capacity to provide structure - to guide, lead, or control the process
- A good sense of timing: offering well-placed questions, knowing when to back away
- Appropriate use of skills
- Responsiveness
- Alertness
 - Constantly takes the pulse of a mediation
 - Invites criticism from the parties
 - Changes behavior if it is perceived as ineffective or inappropriate
 - Is observant
 - Is flexible; adjusts as necessary
- Self-assurance - allows intuition and sensitivity to play into adjustments
- Unwillingness to act inappropriately
- Unwillingness to offer personal opinions; aware of the boundary between information and advice
- Neutrality
 - Assures participants that he or she does not know anyone who is involved in the dispute (or discloses when the opposite is the case)
 - Sits equidistant between parties
 - Displays nonverbal neutrality
- A recognition of the importance of culture
 - Gauges whether and how to shake hands
 - Gauges whether and how to offer statements of empathy
- An ability to problem solve
- An ability to distract and reposition
- An ability to set an agenda

In the domain of rapport, a skillful mediator will show

- An ability to suspend judgment and build trust
- An ability to create an atmosphere of cooperation
 - Uses an appropriate tone of voice
 - Generates a climate of acceptance

- Creates comfort
- Establishes trust
- Creates expectations for the session
- An ability to educate participants so that they can make a choice about buying into the process
- A recognition of his or her own "hooks" or "hot buttons"
- Acting ability
 - Acts objective even when he or she does not feel that way
 - Controls facial expression and body language
 - Can limit responses when appropriate
- An awareness of the mediator's own body language as well as the body language of the parties, especially nonverbal parties
- Good "people skills"
- Sincere respect for all people (e.g., attitudes match words)
- Open-mindedness
- A capacity to separate actions from the actor

In the area of communication, a skillful mediator will show

- An ability to communicate with people in a way they understand (i.e., to match the language and behavior of the mediation to the participants)
- An ability to focus attention on each party
- An ability to gather information
 - Asks useful questions
 - Asks probing questions; gathers sensitive and confidential information (in caucuses)
 - Can frame an issue with open-ended questions
- Good listening skills
 - Highlights needs when they are articulated
 - Provides neutral summaries or paraphrases
 - Reframes issues
- Modulated tone of voice
- An ability to provide information when appropriate
 - Displays information as it is gathered
 - Identifies gaps where more information is needed

In the area of process analysis, a skillful mediator will show

- A system for analyzing the problem
- Recognition of power imbalances
- A sense of whether, when, and how to level the field
- Comfort with ambiguity
- An ability to map the process
 - Puts central issues on a flip chart
 - Looks for shifts in thinking and goals
- An ability to uncover covert issues

- A sense of when to caucus and with whom
- An ability to contextualize
 - Knows when different skills are called for, especially when working with attorneys
 - May be more directive and in control of process
 - May call a process caucus
 - May caucus with attorneys
 - May meet without attorneys for some of the mediation
- Appropriate reinforcing behaviors
 - Makes selective disclosures
 - Is willing to collaborate or cooperate

In the area of empowerment, a skillful mediator will show

- Openness
- Validation of concerns
- A desire to help people examine and adjust expectations; supports compromise when appropriate
- A desire to help people make choices about the problem-solving process (e.g., invites participants to design their own ground rules, establish priorities, determine when or if to call a caucus)
- A desire to help people recognize their own ability to solve the problem (e.g., explores how each person can contribute to a good outcome)
- A willingness to elicit the goals of the parties
- A willingness to ask the parties to identify best and worst outcomes
- Comfort with "venting"
- Attention to parties even when they are represented by an attorney
- A willingness to allow people to solve their own problems
- A willingness to allow parties to enter into the agreement they want
 - Assists parties in making informed decisions
 - Writes down what parties say
 - Refers participants back to attorneys as needed
 - Asks "what if" questions; checks for feasibility
 - Poses hypotheticals about the future
 - Shares examples of what others have done in similar situations
 - Assigns "homework" so participants can verify or gather information
 - Stops the mediation temporarily so that people can gather additional information
- Support for the dignity of all parties

A mediator who lacks skill would show behaviors such as the following:

- Repeatedly looking at his or her watch
- A need to control
- Getting "hooked," losing neutrality
- An inability to understand the reality of the parties
- Operating in the realm of the mediator's reality only: the mediator's values take precedence

- Arrogance - presuming to know all the answers
 - Provides all the solutions
 - Fails to get a commitment from the parties
- A lack of introspection about his or her own behavior
- Rigidity
- A sense that the agreement belongs to the mediator rather than to the parties (e.g., "I got an agreement")
 - Needs to have an agreement
 - Plays into the parties' needs in order to get a decision or answers
 - Can't let go of an agreement he or she likes
- Leading the parties into a settlement that pleases the mediator

Factors that make skilled performance difficult include the following:

- Skill may be defined differently in different domains
- Some domains may require subject-matter expertise
- What is considered skillful may be driven by what the market wants a mediator to be
- Cultural differences (e.g., eye contact, tone of voice)
- Time pressures in court programs make it harder for a mediator to give participants time (e.g., multiple sessions, time to consult experts or complete homework assignments)
- Knowing when different styles would be appropriate
- Matching language and behavior when participants are from diverse backgrounds
- Insufficient training on how to create and maintain impartiality
- Not enough support for mediators

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ENDNOTES

1. The Consortium on Negotiation and Conflict Resolution (a Georgia consortium of conflict resolution professionals) was the earliest supporter of the project, along with Carl Vinson Institute of Government at The University of Georgia and the Georgia Department of Child and Family Development.
2. According to Shaw (1994:157): "The last decade has witnessed a remarkable increase in the extent to which courts are encouraging and even mandating litigants to use mediation and other forms of dispute resolution to settle their cases short of trial. Whether located inside or outside the courts, programs and services providing alternative dispute resolution (ADR) options are generally promoted as providing faster, cheaper, and better-quality outcomes. Proliferation of these programs and services, particularly when they are offered or mandated by a court, raises serious issues of quality control. At risk is not only the waste of scarce resources but also dissatisfaction and loss of confidence in the public justice system by its users and, ultimately, by the public at large."
3. Carrie Menkel Meadow's 1996 article in NIDR News, "Is Mediation the Practice of Law?" spawned an important dialogue, a result of which the June 1997 issue of the NIDR Forum was devoted to further analysis of this issue; Menkel Meadow's rejoinder appears in the November/December 1997 and January 1998 issues of NIDR News.
4. This may be naive, but we assume that competent mediators are also skillful. While SPIDR (1989) and the Test Design Project (1995) list skills and competencies gleaned from expert panels, little has been done to articulate the complex actions encompassed by the skills described. There is even less research that both defines and explores how skills contribute to competence. The Test Design Project began a trend toward testing, and there have been attempts to develop assessment tools (See Russell, n.d. and 1993; Wilkerson 1994) but such products are not currently available to mediators, trainers, or administrators of DR programs serving courts.
5. Our review of both the literature and data from state offices and state associations of mediators suggests that this may be a unique data set. Without data that allow a broad look at who mediates, the field lacks grounding for any assumptions about demographic trends. While people may assume that there are more attorney-mediators today than there were five or ten years ago, or that new mediators are younger or more predominantly male, there is insufficient data to test any of these assumptions. One long-range result of this project might be to encourage others to collect similar databases in other states and over the course of years.
6. Private correspondence from Sharon Press, Director, Dispute Resolution Center, Office of the State Courts Administrator, Tallahassee, Florida, December 24, 1997.

7. The methodology used by the Test Design Project is similar to an analysis of job elements used in the federal government (See Foster, in press), but a more detailed and introspective diary approach was not a part of the Test Design Project development process.
8. The capacity of these data to yield quite detailed analysis far surpasses the level of detail evidenced in the Test Design Project instruments.
9. This is a continuation of the efforts of AFM (1994) and Russell (n.d., 1993).
10. This section was taken from Herrman and Goettler (1997).
11. The demographic data compiled from the **Portrait** were also compared to data collected in 1988 and 1989 from mediators serving the Honolulu Justice Center. Comparisons of the **Portrait** and the Honolulu samples highlighted the distinctions between mediators working as volunteers for a single center and a more heterogeneous group of mediators working for several court programs.
12. The percentage of attorneys is a little lower than the percentage reported by the state office of dispute resolution (ODR), but (1) the **Portrait** was sent to government mediators, who may not be registered with ODR and who are probably not attorneys; and (2) attorneys may have been reluctant to take the time necessary to fill out the **Portrait**.