

Kluwer Mediation Blog

What If Mediation Science Originated In The Real World?

Michael Leathes (Corporate counsel & author) · Monday, February 4th, 2019

Early in Sir Arthur Conan Doyle's 1891 short story *A Scandal in Bohemia*, Sherlock Holmes gives Watson a lecture on the difference between seeing and observing. To test how well Watson understood, Holmes hands him an unaddressed, undated, anonymous letter that had just arrived on the doormat. It announced that an unnamed visitor would shortly arrive to consult Holmes, perhaps wearing a mask. Watson read it, declared it to be mysterious, and asked Holmes what it meant. The great detective replied: *I have no data yet. It is a capital mistake to theorize before one has data. Insensibly, one begins to twist facts to suit theories instead of theories to suit facts.*

Of course all mediators apply this wisdom when they start and progress a case. Questioning, listening, noting, delving, querying, testing, clarifying, re-questioning, never assuming. Data provides the power that enables a mediator to assist the parties toward a mutually acceptable outcome. But does it stop there? When it comes to skills and techniques, could the data that is currently available be greatly improved?

The current body of mediation research data that underpins mediators' skills and techniques is highly fragmented. Most has been conducted on a small national or local scale by individual provider and academic institutions. The data is often based on statistics, surveys and class exercises with available participants, such as trainees and students. These controlled laboratory studies by scholars and service providers are typically cost-efficient and fast, enabling relatively easy analysis. They have been crucial in the early development of mediation. However, as commentators have noted, the classroom behavior of students and trainees, not to mention surveys, can differ markedly from action in the real world^[1], challenging the robustness of the data.

The more accurate, but also more difficult, way to conduct research is out in the field, in live action. Field research is largely based on actual observations of the live action by skilled researchers. The quality of the results, once analyzed, is more credible than from lab studies. Unlike lab work with students and trainees, researchers in the field cannot establish, control and manipulate the factors and variables that come into play. This means that the results need to be assessed differently to establish a true correlation between certain mediation techniques and specific outcomes. There has been little real field research in mediation because it is costly, complicated and parties need to allow the presence of a researcher.

But as we start a New Year, soon a new decade, let's dare to be a bit adventurous.

What if a vast range of mediation skills and techniques could be radically improved by new data

derived from large-scale national and international field research?

What if mediation field research could happen in a coordinated manner, maintaining a critical level of universal definitions that allows comparison of findings, thus avoiding duplication of effort and cost, accelerating the generation of a truly credible global body of “mediation science”, overcoming the management and cost considerations that currently spook this prospect?

What if data from synchronized field research really could be made freely available online to assist mediators select the processes and tools that would be most likely to benefit a wide range of circumstances – instead of having to rely only on a haphazard combination of training, instinct, experience, experimentation and habit?

What if, to give one example of potentially hundreds, field research in a particular situation could determine the statistical probability of a certain style of mediation, or a particular hybrid process, being more or less likely to meet the needs of the parties? Or, to give another example, what if field research could establish the most likely successful approach, process or questioning sequence where the parties have different cultural backgrounds?

What if field research could establish the optimal time to mediate in certain situations?

What if the financial value of a conventional mediation, or a hybrid process like [Arb-Med-Arb](#), or other things that are known or assumed to be significant but still remain largely unproven, could be credibly established by fieldwork data?

What if the costs of large-scale coordinated field research could be funded by grant-giving institutions, governments and the prime beneficiaries of such research who would be motivated to allow the presence of researchers to observe mediations?

These may be rhetorical questions, but we should not dismiss them as fanciful. If more targeted field research really would generate great new value for parties and mediators, and therefore absolutely needs to be done, why not just get on and do it?

Should a conversation now start about the value and do-ability of these propositions?

In the 1970s and 80s, researcher [Neil Rackham](#) devised and led the largest ever field-based study into successful techniques in the art of selling. His work focused on questioning techniques. It took 12 years and cost the current equivalent of \$30 million. Rackham’s books derived from his field study data, such as [SPIN Selling](#), are among the most sold sales books ever. In terms of more and better sales of products and services worldwide, the value generated by the field studies of Rackham and his associates is inestimable. His work is also applicable to negotiators and mediators^[2].

Has the mediation world spent too long developing lab-based facts to suit its theories?

Might it start to hone new theories of mediation excellence from field-based facts?

Please take a moment to provide your thoughts by way of comment on this post. If you prefer to comment in private, my email address is on my website. If, as I hope, this subject stirs a reaction, I will try to summarize the range of opinions with a further post.


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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

References[+]

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