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Abstract

There is a significant need for empirical evidence concerning how litigants compare and choose between various forms of Online Dispute Resolution (ODR) and traditional in-person procedures for resolving legal disputes. To fill this need, we examined three potentially relevant psychological factors: (a) baseline attitudes toward in-person, video, and text-based mediation; (b) past communication style used by litigants; and (c) expert advice via attorney recommendations. We utilized a 2 × 3 × 3 design with communication style as a between-subjects variable, mediation modality as a within-subjects variable, and attorney recommendation randomized as either aligning with or differing from the participant's baseline preference across 261 participants. We also identified the factors that litigants believe influence their decisions and examined how these factors shape their perceptions and ultimate choice. Participants read two cases and indicated their preferred mediation modality for each by ranking and rating the three modality options. They then learned which option their hypothetical attorney recommended, and ranked and rated the options again. Using a mixed-model factorial analysis of variance (ANOVA), we found that (a) parties generally disfavored text-based modalities; (b) parties were swayed by their attorneys' modality recommendation; and (c) the influence of an attorney recommendation was tempered when the attorney suggested text-based mediation. The findings have implications for both legal psychology and policies surrounding ODR, including the current trend in state courts to rely on text-based ODR.

Keywords: online dispute resolution, attorneys, litigants, mediation, decision-making

Justice via Chat: Litigants' Perceptions of Online Dispute Resolution and the Impact of Attorney Advice and Party Communications

A major technological innovation has begun to transform the civil justice landscape. In response to a shift toward online engagement, which was greatly accelerated by the COVID-19 pandemic, courts and private Alternative Dispute Resolution (ADR) providers in the United States and elsewhere have begun to adopt Online Dispute Resolution (ODR) platforms (Ebner, 2012). ODR attempts to combine the benefits of ADR procedures like mediation and negotiation, which allow parties to shape the process and outcomes of their case, with the ease and cost savings of online communication. The psychological aspects of this innovation are not yet understood. One line of thought is that parties might value ODR as a tool for gaining more control over the dispute resolution process or to save time or money (e.g., Sternlight & Robbennolt, 2022). Other scholars argue that litigants' interest in resolving their disputes through virtual means might depend on the nature of their relationship with the other party (e.g., Nadler & Shestowsky, 2006). Moreover, regardless of how parties feel about the prospects of ODR for their case, their lawyers might significantly shift how eager they are to use it.

To date, few published studies have examined prospective preferences for ODR relative to traditional forms of resolving legal disputes or the factors that shape those preferences (but see Cole & Spangler, 2022 (citing research reviewing mediators views of virtual mediation); McDermott & Obar, 2022 (analyzing EEOC mediation participants perceptions of ODR after mediation); Mentovich et al., 2023 (analyzing the impact ODR after the conclusion of a case)). Without such work, courts are left to make assumptions regarding how litigants assess their ODR opportunities (see Witwer et al., 2021). To address this gap in the literature, the present study aims to further our theoretical understanding of litigants' decision-making processes and provide insights to guide policy decisions regarding this still nascent civil justice innovation. The need for empirical research to guide dispute resolution systems design is especially acute for mediation because it is one of —– if not the most — common form of ADR sponsored by courts and private ADR providers (Garcia, 2019; Stipanowich, 2004; Stienstra, 2011).

Mediation is a procedure wherein a neutral third party facilitates negotiation amongst disputing parties as they attempt to reach a mutually agreed-upon resolution to their dispute. Mediation is more structured than negotiation because it involves a third party who manages the negotiation but is more informal and conversational than arbitration, wherein a third party or panel of third parties hears evidence presented in a structured manner and then renders a decision. In mediation, the third party is not empowered to decide the outcome —the parties are. But, in binding arbitration stipulated in arbitration clauses found in employment and consumer contracts, for example, arbitrators are mandated to issue a binding award. In non-binding arbitration, which is typical in court systems, arbitrators are charged with making a recommendation that either party can veto. Many other ADR procedures exist, but negotiation, mediation, and non-binding arbitration are the most common for cases filed in state courts where over 98.5% of United States lawsuits are handled (ABA, 2024; National Center for State Courts, 2024).

Contextualizing ODR

Before the advent of ODR, ADR traditionally took place in person, with parties arranging a meeting time and sometimes coordinating the assistance of a third party, such as a mediator. These procedures often entailed considerable financial and time costs, causing some parties to forego their legal right to seek justice. The explosive growth of E-commerce and public policy initiatives to reduce access to justice barriers catalyzed the development of ODR (Sela, 2017). The earliest ODR platforms -- spearheaded by companies such as PayPal and e-Bay -- addressed the need to handle high-volume, low-value disputes between buyers and sellers in the E-commerce space in ways that minimized the costs and other challenges associated with relying on the courts. (Martinez, 2020; Quek, 2019). For example, eBay buyers and sellers can try to resolve common "item not received," "item not as described," or "unpaid item" disputes by answering guided questions that help the complaining party to both diagnose the problem and suggest their preferred outcome and then use its messaging platform to negotiate a resolution. If the negotiation fails to resolve the matter, the dispute can be escalated to a staff member who will evaluate the claim and determine the outcome.

Since its emergence in the context of E-commerce, ODR has spread throughout the U.S. court system. As of 2023, ODR was available in over 100 court locations for a variety of case types, including small claims, traffic violations, and custody issues (National Center for Technology and Dispute Resolution, 2023; Prescott, 2017). Some courts require parties to use ODR (see Shestowsky & Shack, 2022), while others are voluntary. Courts that have ODR programs generally offer text-based or video modalities, but other modalities exist, including teleconferences (Rule, 2016). These formats vary in their levels of synchronicity (high synchronicity allows real-time communication, whereas low synchronicity involves a delay in communication) and richness (i.e., opportunities to glean information from participating parties, such as by sight and sound) (Sela, 2017; Sternlight & Robbennolt, 2022). For example, video conferences, such as those on Zoom, are high in both synchronicity and richness, whereas text-based methods, such as instant messaging and email, are low in synchronicity and richness (Sternlight & Robbennolt, 2022). Some courts utilize multiple formats (Rule, 2015). The availability of a diverse set of options, in addition to in-person procedures, can help litigants find a modality that fits their unique needs (Sternlight & Robbennolt, 2022).

Decision-Making about Dispute Resolution Procedures

While some litigants may be obligated by contract or court rules to follow specific procedures, many have the freedom to choose the procedure used for their disputes (Shestowsky, 2020). In the latter circumstance, litigants can assert their legal rights in a trial or choose an ADR procedure such as mediation, arbitration, or negotiation. Further, each of these methods can take place either in a face-to-face setting or virtually online, presenting litigants with even more choices. Many litigants can now decide between using the in-person or virtual modality of the same ADR procedure. Given the frequency and importance of these procedural decisions, legal actors stand to greatly benefit from psychological research concerning how litigants perceive these alternatives and decide whether to use them.

Factors Litigants Consider When Making Decisions about Procedures

Although the existing literature is sparse, researchers have uncovered several factors that litigants contemplate when evaluating their procedural options. Some studies indicate that litigants make their

evaluations based on the degree of control they can exert over case management, distinguishing between options that give them control as opposed to those where third parties, such as mediators or judges, have more influence (Shestowsky, 2016; Shestowsky & Brett, 2008), with one major field study finding that litigants favor third-party control to litigant control (Shestowsky, 2016). Other research indicates that when people assess their procedural options ex ante, they tend to be instrumentally focused, meaning they prefer procedures they believe will advance their self-interests, typically in terms of maximizing material gains (Tyler et al., 1999). A recent analysis of the relevant research found that litigants in the early stages of legal proceedings tend to hold optimistic views about their chances of success at trial (Shestowsky, 2014). Moreover, their personal assessments of the likelihood of winning at trial are positively associated with their interest in adjudicative procedures such as jury trials, bench trials, and hearings (Shestowsky, 2014). Thus, the observed preference for third-party control appears to reflect a self-interested belief that third parties will deliver the legal outcomes they feel they deserve.

Shestowsky (2018) examined the possibility that the factors that influence litigants' decisions change during the pendency of litigation. Her longitudinal study surveyed litigants whose courts offered a choice between trial, mediation, and arbitration (and who could also opt for procedures external to the court system, such as negotiation) at both the start and end of their cases. At the beginning of their case, they were asked open-ended questions about how they would determine which procedure to use. The most common ex-ante factor was the advice of a lawyer. This finding aligns with survey research suggesting that upwards of "87% of clients follow their attorney's advice regarding the appropriate dispute resolution method at least ¾ of the time" (McCormack & Bodnar, 2010, p. 165). The next most common factors identified were minimizing economic cost and time. Litigants were surveyed again at the conclusion of their case to determine which procedure they used and why. At this time-point, the most common response among litigants was that their lawyer motivated the use of the procedure that ultimately ended their case and the procedures they used earlier in time to try to resolve the case (20.2% and 27.1%, respectively) (Shestowsky, 2018). Notably, although people are notoriously bad at self-prediction (Loewenstein & Angner, 2003), those litigants who had anticipated their lawyer's advice and cost

considerations as factors in choosing procedures were more likely than other litigants to report that these factors ultimately drove the procedure they used, suggesting that litigants anticipate this type of lawyer influence on procedural choice and in fact experience it (Shestowsky, 2018). This finding aligns with expectations established by Rules 1.2 and 1.4 of the ABA Model Rules of Professional Conduct, which together hold that the client is to decide the objectives of representation and that the lawyer shall consult with the client regarding the means by which they are to be pursued. By implication, attorneys should help their litigation clients make informed decisions about which dispute resolution procedures to use for their cases.

Importantly, the longitudinal data used in Shestowsky's study were collected before ODR took hold in the U.S. court system. It is possible that the time, cost, and attorney influence also play a role when litigants choose between in-person and online versions of the same procedure. Even if attorneys do not yet have extensive experience with online modalities, their opinions on the choice between text-based, video, and in-person options might carry weight with their clients. Litigants might also regard ODR as offering cost- and time-saving benefits. Costs of using court ADR programs, including ODR, depend on how much neutrals charge for their services and whether courts cover these expenses or subsidize them (Shestowsky, 2016). But even when courts cover the costs of a neutral's time, parties using in-person ADR can nevertheless incur direct costs, including costs associated with traveling to the courthouse. Unlike traditional in-person procedures, if people have internet access close to home, ODR options would help them avoid transportation costs (Pew, 2019). In addition, because parties can use ODR from the location of their choice, it can potentially eliminate indirect costs such as child or elder care expenses or missed wages.

ODR can also offer parties greater control over when and where the dispute resolution process takes place, which might save time. Parties can theoretically use video or text-based ODR from almost any location, including their home, office, or vehicle. From this perspective, online modalities can accommodate existing childcare, eldercare, and work schedules (Bulinski & Prescott, 2016) and spare parties the time needed to travel for in-person proceedings. Moreover, text-based mediation that

disputants can log into at their convenience throughout the day can help them avoid missing work or other commitments that are restricted to traditional business hours (Sternlight & Robbennolt, 2022), which can result in greater time efficiency. This flexibility can make ODR options, particularly those that are asynchronous, like text-based modalities, more enticing than their in-person counterparts.

The Influence of Parties' Relationship on Selection of Procedure Modality

The extant research also suggests that the relationship between the parties can inform litigants' procedural decisions (Votruba et al., 2022) and that party communication quality can impact which ODR modality might work best for a particular dispute. On one hand, in-person communications might be best for parties with positive prior relationships. Resolving disputes virtually can hinder rapport-building, especially in the negotiation context (Nadler & Shestowsky, 2006). Parties with pre-existing relationships may have less need to build rapport and may find online options more convenient (Shestowsky & Nadler, 2006; Sternlight & Robbennolt, 2022). Further, parties with particularly negative relationships could prefer the remote communication methods inherent in ODR (Sternlight & Robbennolt, 2022). On the other hand, individuals generally report a better understanding of the other party and an increased trust in the other party in face-to-face versus online mediation (Damen et al., 2020). This sort of trust-building may be particularly valuable for parties with an adversarial relationship (Nadler, 2004). Together, these findings suggest that parties might evince different preferences for in-person versus text-based versus video ODR options depending on the nature and quality of their relationship with the opposing party.

Present Study

Our study attempts to address important gaps in the psychological literature concerning litigants' procedural decisions and to lay the foundation for extending this work in the burgeoning ODR space. We pursue these objectives by answering five questions. First, what are litigants' baseline attitudes toward and preferences for alternative dispute resolution modalities that take place either in person (in-person), online in a synchronous modality (video), or online asynchronously (text)? Second, are those baseline attitudes and preferences shaped by the litigants' relationship, as defined by whether the parties have a polite or antagonistic communication style? Third, how do attorneys' procedural recommendations shape

litigants' attitudes toward modality options and their ultimate choice? For instance, if a litigant initially prefers an in-person option, does this preference shift if their attorney recommends text-based dispute resolution? Fourth, what factors do potential litigants predict will influence their procedural decisions, including whether such preferences are more aligned with economic or non-economic factors? Finally, how do these factors shape litigants' perceptions of modalities and their ultimate choices between them?

To examine these issues, we utilized a 2 (litigant communication style: polite vs. antagonistic) x 3 (mediation modality: in-person vs. video vs. text-based) x 3 (attorney's recommendation: in-person vs. video vs. text-based) design, with communication style as a between-subjects variable, mediation modality as a within-subjects variable, and attorney's recommendation randomized across participants. Communication style was manipulated by describing the communication with the opposing party as polite or antagonistic.

To increase the generalizability of our results, we used a stimulus sampling procedure to ensure that a particular set of facts did not drive our findings. To that end, participants read two hypothetical cases, both with polite or antagonistic communication depending on the participant's condition, in which they were asked to assume the role of a plaintiff in a legal case. Because some scholars believe that low-value, simple disputes like those arising in the E-commerce context are ideal candidates for ODR (Sternlight, 2020), and much of the early adoption of ODR in state courts has centered around small claims cases, both hypothetical cases involved relatively low dollar values.

After reading each case, participants rated the importance of various factors (e.g., time, cost, ability to control process) for deciding amongst mediation modalities. Participants were told, "Different types of mediation are available [...], and different factors may determine preferences for one type [of mediation] over another. For each factor listed below, indicate how important it is to you [...] in deciding what type of mediation to choose." Participants then rated three modalities they could use to resolve their dispute (i.e., in-person, video, and text-based mediation) based on how attractive each option seemed for the case at hand, and then ranked them in order of preference. We focused on mediation because it is frequently the focus of courts' ODR efforts and is common in private ADR (Garcia, 2019; Stipanowich,

2004; Stienstra, 2011). After completing this step, participants were told which option their hypothetical attorney recommended. Participants then ranked and rated the three mediation modalities again.

We advanced the following hypotheses: (a) given the control and time-savings potential of text-based ODR and prior research finding that litigants value these factors, participants prefer text-based mediation to video mediation but have no preference between in-person and text-based mediation; (b) given prior research showing that litigants perceive control as relevant when evaluating procedures and that control over the space and time of communications may be particularly important in antagonistic relationships, parties with an antagonistic communication style prefer in-person mediation less than either form of online mediation and less than parties who have a polite communication style; and (c) given prior work suggesting that litigants highly value their attorneys' procedural recommendations, parties show more interest in any mediation modality their attorney recommends (compared to ones their attorney does not recommend). Given the paucity of empirical research in this area, we did not develop hypotheses concerning any of the other two-way or three-way interactions. Analyses regarding parties' rationales for selecting a preferred mediation modality were solely exploratory.

Method

Transparency and Openness

The authors have followed the journal's recommendations to ensure that all data, program code, and methods developed by other researchers have been appropriately cited in the text and subsequently listed in the References section. The authors have also reported 1) how the sample size was determined, 2) all data exclusions, 3) all manipulations, and 4) all study measures in the Methods section. This study was not preregistered. The Qualtrics scoring form, vignettes, data, and relevant syntax for statistical analysis are available on the Open Science Framework (https://osf.io/8zvrj/?view_only=13cee757e88648688b2de74294c8c17d; AUTHOR & AUTHOR, 2023).

Participants

We recruited participants via the Prolific platform between April 2022 and November 2023. To be eligible to participate, individuals had to reside in the United States, understand English, and be at least

18 years of age. Participants were told that they would imagine suing someone for money. In that role, they would read two scenarios and make decisions about which mediation modality they would want to use. If participants passed the two attention checks, they received $8, with an additional bonus payment of $2 if they passed all attention and comprehension checks.

An a priori power analysis in GPower revealed that 126 participants were needed to detect a medium effect with power of 0.95 (with six groups and three repeated measurements). A medium effect was selected as this is in line with previous research. To ensure sufficient power to detect interactions, we opted to collect double this number for a sample size of 252. A sensitivity analysis determined that all significant effects found in the current study were above the critical effect size and all non-significant effects were below the critical effect size.

In total, 284 participants completed the survey. One participant was excluded from the analytic sample for failing the two attention checks. An additional 22 participants were excluded for failing one or more comprehension checks. The final sample was 261 participants, with a mean age of 38 years old (*SD* = 12.39; range = 18 to 78). Among these participants, 133 (51%) identified as male, 122 (47%) identified as female, four (2%) identified as "other," and one (<1%) preferred not to say. One participant identified as American Indian or Alaska Native (<1%), 20 (8%) identified as Asian, 19 (7%) identified as Black or African American, 207 (79%) identified as White, 10 (4%) preferred to self-describe, and three (1%) preferred not to say. Around 8% (*n* = 20) of the sample identified as Hispanic or Latino/a.

With regard to education, 3 participants (1%) completed some high school but had not obtained a diploma; 34 (13%) had earned a high school diploma or equivalent (e.g., GED); 55 (21%) had completed some college but did not earn a degree; 10 (4%) had completed trade, technical, or vocational training; 20 (8%) had an associate's degree; 100 (38%) had a bachelor's degree; and 38 (15%) had a graduate degree (master's, professional, or doctorate degree).

Measures

Cases

Participants read summaries of two hypothetical legal cases set in a fictional jurisdiction. Participants were instructed to imagine they were the plaintiff in each case, who was named Payton or Morgan, which was emphasized in the instructions (e.g., "imagine you are Payton"). They were then told that they would be asked questions about how they, Payton/Morgan, would want to proceed in the case.

One case ("contract breach") detailed a breach of contract scenario concerning two coworkers who had agreed to exchange ownership of a used car. After the buyer signed the sales contract but before they took ownership, the seller got into an accident with the car and damaged it. The buyer then decided they no longer wanted the car. The other case ("disparagement case") described a disparagement situation between two parents who were involved in the Parent Teacher Association ("PTA") at their children's school. After arguing at a bake sale, one parent posted a harmful rumor about the other parent's cookie business on social media, which led to that person being criminally investigated.

The cases differed only in terms of the alleged harm (breach of contract or disparagement), the names of the litigants, and the party's relationship (coworkers or fellow PTA members). We did not utilize fact patterns derived from any one lawsuit to ensure that participant responses would not be biased by previous knowledge of specific cases. Instead, we drafted cases based on an amalgamation of lawsuits reported in the media and other sources (e.g., Burke, 2022; Puente, 2016; Tarm, 2012). Two cases were chosen to increase external validity by using a stimulus sampling procedure.

Communication Manipulation

Each case described the litigants' communication style with the opposing party. The nature of the communication style was manipulated between subjects. Specifically, participants were told either that the communication style was polite ("After agreeing to try mediation, both parties have remained calm and behaved professionally, so far") or antagonistic ("Although both parties had behaved in a civil manner when deciding on mediation, they have since begun to argue and have yelled at one another").

Baseline Preferences

Then, after reading each case, participants rated and ranked their baseline mediation modality preferences for that case. Participants then learned that parties to a lawsuit can often choose a procedure modality. They read short descriptions of three modalities they could use to resolve the case at hand (in-person mediation, video mediation, text-based mediation). The definitions of the three modalities (i..e, in-person requires that you to attend in person, synchronous online requires you to be available at the same time as the other party/mediator, asynchronous online can be accessed from any place and at any time) were inspired by descriptions provided on websites of major organizations such as the American Bar Association (e.g., McBride, 2020). The three mediation modalities were labeled "in-person mediation," "video mediation" (i.e., synchronous online mediation), and "text-based mediation" (i.e., asynchronous online mediation). Before participants could continue, they had to successfully match the definition of each modality to the correct label. Participants could attempt matching definitions to modality labels as often as necessary until they successfully completed this task. Having participants repeat the task if they failed ensured that they correctly understood each of the three options before stating their preferences.

To obtain baseline modality preferences, participants rated and ranked the importance of a variety of factors they might consider when choosing a mediation modality (e.g., time, cost, ability to control the process). These factors were distilled from past research (e.g., Shestowsky, 2018). Participants rated the attractiveness of each factor for the case at hand on a six-point Likert scale (ranging from "extremely unattractive" to "extremely attractive"; Shestowsky, 2020) and ranked the factors in the order in which they would like to use them for that case (i.e., from first to last). We randomized the order in which the factors and modalities were listed.

Attorney Recommendation and Revised Ratings

After completing the baseline rating and rankings, participants were informed that they met with an attorney to discuss the case ("You meet with your attorney, who has experience solving disputes using each procedure. During the meeting, you learn some new information about your case"). They were then supplied with five additional facts about the case, which were shown in randomized order. One fact was

their attorney's recommendation of which modality to use for the case (e.g., "Your attorney suggests in-person mediation as the best way to resolve this case.").

Qualtrics allows for randomization while "evenly" presenting the survey elements. Branching and randomizers were used to assign each participant to an attorney recommendation based on their baseline preferences. Specifically, 33% of the participants received a recommendation from their attorney to pursue the participant's own top-ranked choice (i.e., recommendation matches baseline preference). For the remaining participants, the attorney's recommendation was randomized between the second- and third-ranked modality options (i.e., the recommendation does not match their baseline preference, but either matches the second-most preferred modality or the least preferred modality). For example, participants who indicated a baseline preference for video mediation may have learned that their attorney suggested either in-person or text-based mediation. This manipulation is not fully randomized, as recommendations were technically dependent on the participant's baseline preference. We opted for this approach to ensure equal cell sizes: If the recommendation had been fully randomized, it would have been possible that participants with a baseline preference for one modality were recommended their preference more often than participants with another baseline preference. Randomization dependent on baseline preference ensured similar cell sizes and sample sizes across the three recommendation match groups, which was indeed accomplished with 34% of attorney recommendations matching participants' first choice, 33% matching their second choice, and 33% matching their third choice.

Four additional facts were presented to mask the study's true purpose. The other facts were identical for all participants: a) a review of similar cases reveals that the case was correctly valued at $7,500; b) the other party has not yet reached out to discuss the case; c) no discovery has happened yet; and d) outcomes for similar cases do vary a lot and therefore make it hard to predict a precise outcome in this case or measure how much the other side might settle for. We randomized the order in which facts were presented to ensure that the presentation order of the modality recommendation had no influence.

Once participants reviewed the new facts, including their attorney's modality recommendation, they again ranked and rated the attractiveness of the modalities for their dispute. The definitions and

characteristics of the modalities used in the first ranking were again available to the participants as they evaluated the options. The participants, however, did not have access to their original rankings. They did, however, have access to the definitions and characteristics of the modalities.

Attention and Comprehension Checks

To ensure that we obtained reliable data, participants completed two attention checks (one for each hypothetical case) and four comprehension checks (two for each hypothetical case). The two attention checks were presented when participants first rated the importance of relevant factors (e.g., time, cost, ability to control process) in each case, in the form of an added item instructing them to "Please select 'slightly (un)important' here." Two comprehension checks were presented at the end of each case. One asked participants to identify the alleged harm (i.e., breach of contract, disparagement, physical harm); the other asked them to identify the modality their lawyer had recommended.

Procedure

Participants were randomly assigned to an attorney recommendation and communication style condition. After completing the demographics survey, they were presented with either Part 1 or Part 2 of the survey (the order was counterbalanced). In Part 1, participants read the first case and then reviewed short descriptions of each of the three mediation modalities, the order of which was randomized to prevent order effects. They completed the comprehension test for these options and then indicated their baseline modality preferences. Next, participants were given five additional facts about the case, also presented in randomized order. Once participants reviewed the new facts, including their attorney's recommendation, they again rated and ranked the attractiveness of the modalities. They then repeated this process for the second case.

In Part 2 of the survey, participants indicated their familiarity with the three mediation modalities on a five-point Likert scale, ranging from not familiar at all (1) to extremely familiar (5). They also rated the amount of personal experience they had with each of the modalities on a four-point Likert scale, ranging from no personal experience at all (1) to a large amount of personal experience (4). Participants also answered questions about their legal experience and current legal attitudes and rated the relative

authority they believed they and their attorney had in making modality decisions (and, in open-ended form, explained the basis for their rating). These measures were intended for another project. The order of Part 1 and Part 2 was counterbalanced. After completing both parts of the study, participants were thanked and compensated for their time.

Results

Preliminary Analyses

Participant Familiarity and Personal Experience with Mediation

Two repeated-measures ANOVAs were conducted with familiarity with each modality and personal experience with each modality as outcome variables. Both ANOVAs reached significance: Participants' familiarity with the three mediation modalities differed significantly, $F(1.78,456.67) = 279.29$, $p < .001$, $\eta p^2 = .52$, with participants indicating more familiarity with in-person mediation ($M = 3.31$, $SD = 1.15$) than with video ($M = 2.56$, $SD = 1.17$) or text-based mediation ($M = 1.76$, $SD = 1.04$), with the latter two also differing significantly, all ps $< .001$. Similarly, participants' personal experience with the three mediation modalities differed significantly, $F(1.67,434.72) = 47.31$, $p < .001$, $\eta p^2 = .15$, with participants indicating more personal experience with in-person mediation ($M = 1.46$, $SD = 0.81$) than with video ($M = 1.17$, $SD = 0.55$), $p < .001$ or text-based mediation ($M = 1.07$, $SD = 0.33$), $p < .001$, with the latter two also differing significantly, $p = .008$.

To check whether familiarity and personal experience with the mediation modalities predicted participants' preference for said modalities, twelve regressions were conducted with familiarity and personal experience with the three modalities as the predictors and both the pre- and post-recommendation ratings for each of the three modalities across the two cases as dependent variables. To account for the multiple regressions, an alpha correction of .025 was applied, as every outcome was included in two regressions (i.e., once in the contract breach case and once in the disparagement case). Only those participants who completed the survey probing their familiarity and personal experience before the main study ($n = 134$) were included in this analysis. Only one regression reached significance, with only one significant predictor: In the contract breach case, the post-attorney recommendation for

text-based mediation was significantly predicted by the combination of predictors, $F(6,133) = 2.60$, $p = .021$, R^2 change = 0.11. The only predictor to reach significance was personal experience with in-person mediation, $\beta = -0.29$, $t = -2.57$, $p = .011$. Participants with more personal experience with in-person mediation rated text-based mediation lower after they received their attorney's recommendation. No other regressions reached significance, all Fs ≤ 2.37 and all ps $\geq .033$ (note the alpha correction to .025).

Main Analyses

Litigants' Baseline Modality Preferences

To understand how participants evaluated the different mediation modalities absent information regarding their attorneys' recommendation, we analyzed their baseline evaluation data. Frequency analyses of baseline modality attractiveness ratings revealed that participants liked text-based mediation least, collapsed across communication style (i,e., antagonistic or polite). On a Likert scale from 1 (extremely unattractive) to 6 (extremely attractive), ratings for text-based mediation averaged 3.44 (SD = 1.65) for the contract breach case and 3.30 (SD = 1.60) for the disparagement case, which roughly translates to "slightly unattractive." Whether in-person or video mediation was rated highest depended on the case: For the contract breach case, in-person mediation was rated highest in attractiveness, averaging 4.72 (SD = 1.30), which roughly translates to "somewhat attractive"; video mediation ratings averaged 4.54 (SD = 1.27), reflecting an evaluation halfway between "slightly attractive" and "somewhat attractive." For the disparagement case, video mediation was rated highest, averaging 4.61 (SD = 1.25), and in-person mediation ratings averaged 4.48 (SD = 1.53). A factorial repeated-measures ANOVA comparing ratings for the three modalities across the two cases found a significant main effect of modality, $F(1.60,414.78) = 66.49$, $p < .001$, $\eta p^2 = 0.20$, and a significant interaction between modality and case, $F(1.63,423.95) = 3.38$, $p = .045$, $\eta p^2 = 0.01$. The interaction did not reveal different patterns for ratings, as text-based mediation was rated significantly lower in attractiveness than in-person and video mediation, all ps $< .001$, with the latter two not differing significantly in either the breach of contract case, $p = .307$, or the disparagement case, $p = .719$. Instead, the interaction evinced a significant difference in in-person mediation ratings between the two cases, $p = .005$, with a higher rating in the contract breach

case (M = 4.72, SE = 0.08) than in the disparagement case (M = 4.48, SE = 0.10), whereas no difference in ratings was found between the video mediation, p = .279, or the text-based mediation, p = .108. Note also that this was one of two interaction effects that cleared the threshold for the critical F and the critical effect size but not for the doubled F (3.70) and effect size (ηp^2 = 0.03).

Despite differences in ratings of attractiveness, the overall ranking frequencies for the disparagement case mimicked those that emerged for the contract breach case. For the contract breach case, in-person mediation was most frequently ranked first or most preferred (n = 136; 52%); video mediation was most frequently ranked second (n = 160; 61%); and text-based mediation was most frequently ranked third (n = 170; 65%). For the disparagement case, in-person mediation was most frequently ranked first (n = 131; 50%), video mediation was most frequently ranked second (n = 158; 61%), and text-based mediation was most frequently ranked third (n = 167; 64%). A factorial repeated-measures ANOVA comparing rankings for the three modalities across the two cases produced a significant main effect of modality, $F(1.74,451.17) = 66.62$, $p < .001$, $\eta p^2 = 0.20$, but no significant interaction, $F(1.67,434.85) = 0.66$, $p = .491$, $\eta p^2 = 0.00$. Similar to the pattern we observed for the modality preference ratings, text-based mediation was rated significantly lower than in-person and video mediation, both ps < .001, with the latter two not differing significantly, p = 1.000.

These patterns suggest that, collapsed across communication style, participants prefer to attempt to resolve the breach of contract dispute with in-person mediation and the disparagement case with video mediation, with text-based mediation being least preferred in both instances. These findings contradict our first hypothesis, which posited that text-based mediation would be preferred to video mediation but not in-person mediation.

Influence of Attorney Recommendation and Communication Style on Procedure Modality Attractiveness Ratings

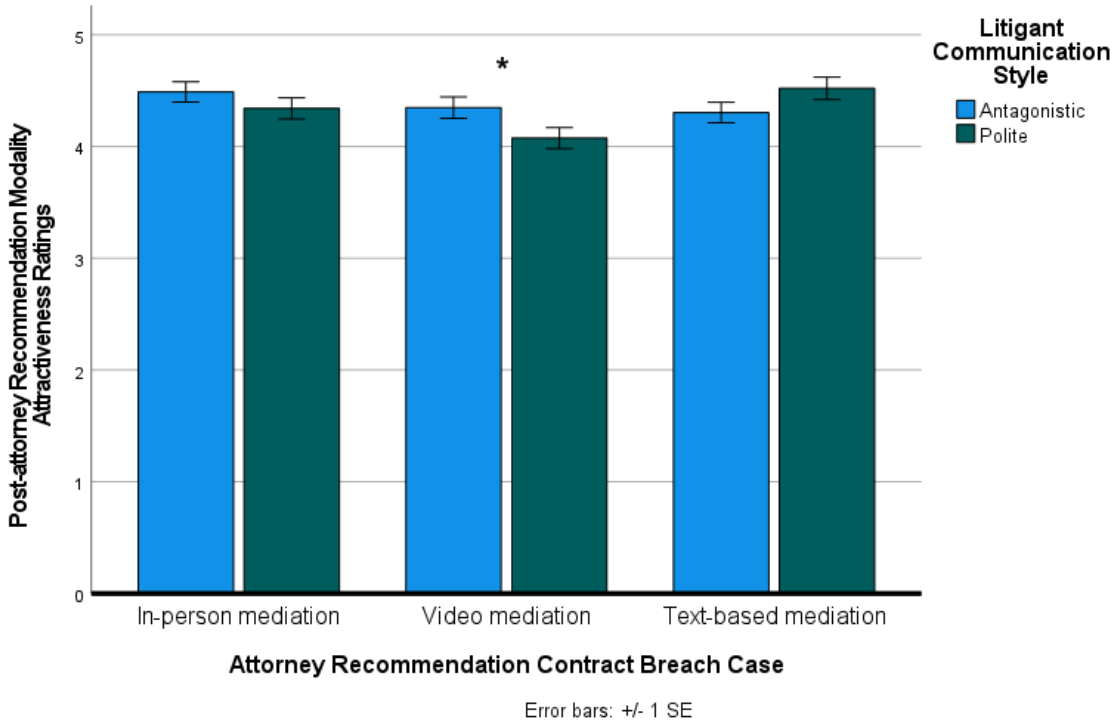
We conducted two mixed-model factorial analyses of variance (ANOVAs) to investigate the influence of attorney recommendation and communication style on post-attorney recommendation modality attractiveness ratings, with the three mediation modalities included as a within-subject variable,

for each case. A main effect of attorney recommendation emerged for the contract breach case, $F(2,255) = 3.03$, $p = .050$, $\eta p^2 = .02$, but not in the disparagement case, $F(2,255) = 0.24$, $p = .828$, $\eta p^2 = .00$. However, this main effect was subsumed by its interactions with communication style and mediation modality (see below), and none of the pairwise comparisons reached significance, all ps $\geq .094$. Conversely, we found a main effect of communication style for the disparagement case, $F(1,255) = 4.03$, $p = .046$, $\eta p^2 = .02$, but not in the contract breach case, $F(1,255) = 0.78$, $p = .377$, $\eta p^2 = .00$. Overall, mediation attractiveness ratings were higher when communication was described as antagonistic ($M = 4.28$, $SE = .06$) than polite ($M = 4.11$, $SE = .06$), $p = .046$.

A significant interaction between attorney recommendation and communication style emerged for the contract breach case, $F(2,255) = 3.58$, $p = .029$, $\eta p^2 = .03$, but not for the disparagement case, $F(2,255) = .24$, $p = .787$, $\eta p^2 = .00$. Post hoc analyses for the contract breach case evinced lower overall ratings when video mediation was recommended in the contract breach case when communication style was described as polite ($M = 4.08$, $SE = .10$) compared to antagonistic ($M = 4.35$, $SE = .10$), $p = .042$ (see Figure 1). No differences were found for the ratings for in-person mediation, $p = .259$, or text-based mediation, $p = .110$. Additionally, when communication was described as polite, participants rated text-based mediation significantly higher ($M = 4.52$, $SE = .10$) than video mediation ($M = 4.08$, $SE = .09$), $p = .004$. No other differences between the different mediation modalities arose across either communication style (all ps $\geq .142$).

Figure 1

Interaction Between Attorney Recommendation and Communication Style in Contract Breach Case



Note. * $p < .05$

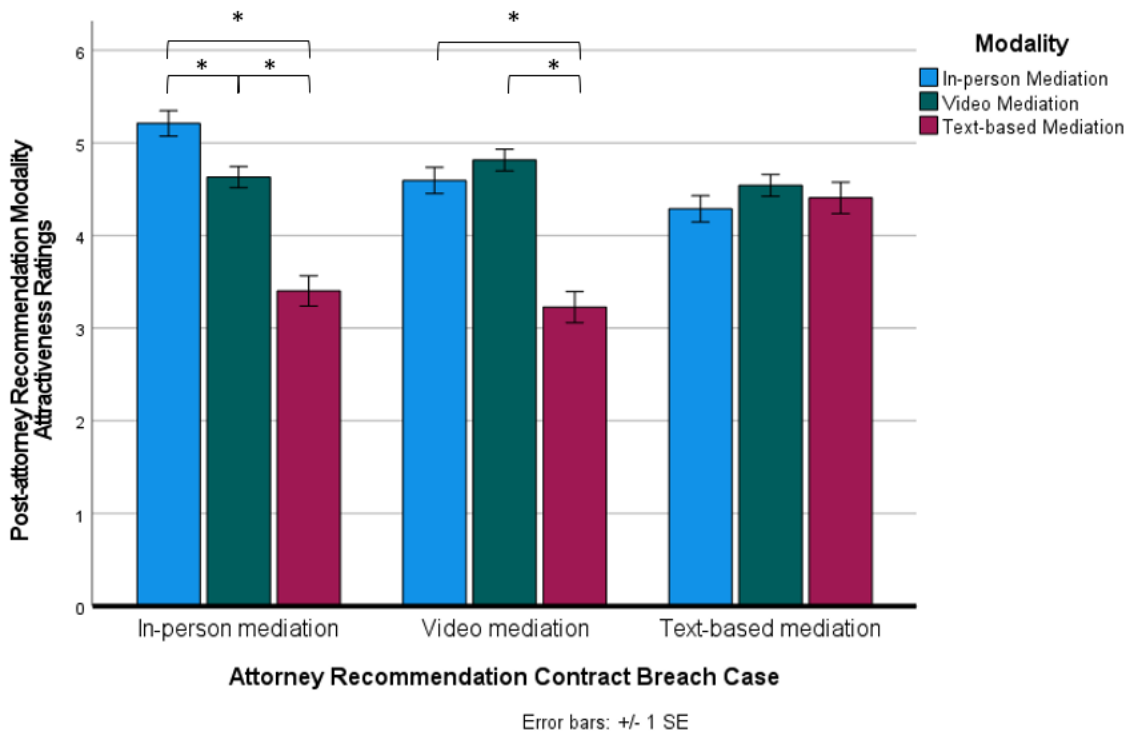
A main effect of mediation modality was found, $F(1.56,398.81) = 42.08$, $p < .001$, $\eta p^2 = .14$ (contract breach), $F(1.58,402.15) = 34.79$, $p < .001$, $\eta p^2 = .12$ (disparagement). Post hoc analyses revealed lower ratings overall for text-based mediation ($M_{Breach} = 3.68$, $SE_{Breach} = 0.10$; $M_{Disparagement} = 3.55$, $SE_{Disparagement} = 0.10$) compared to in-person mediation ($M_{Breach} = 4.70$, $SE_{Breach} = 0.08$; $M_{Disparagement} = 4.47$, $SE_{Disparagement} = 0.09$), $p < .001$, and video mediation ($M_{Breach} = 4.66$, $SE_{Breach} = 0.07$; $M_{Disparagement} = 4.57$, $SE_{Disparagement} = 0.07$), $ps < .001$, with the latter two not differing significantly, $ps = 1.000$. Contrary to our second hypothesis, which predicted that parties would prefer in-person mediation less and either form of ODR more when communication style was antagonistic, the interaction between modality and communication style did not reach significance in either the contract breach, $F(1.56,398.81) = 1.81$, $p = .173$, $\eta p^2 = .01$, or the disparagement case, $F(1.58,402.15) = 1.33$, $p = .263$, $\eta p^2 = .01$.

This main effect of modality was superseded by its interaction with attorney recommendation, which reached significance for both the breach of contract, $F(3.13,398.81) = 12.60$, $p < .001$, $\eta p^2 = .09$,

and disparagement case $F(3.15,402.15) = 19.50$, $p < .001$, $\eta p^2 = .13$. In both cases, when the attorney recommended in-person mediation, participants rated in-person mediation more favorably ($M_{breach} = 5.21$, $SE_{breach} = 0.14$; $M_{disparagement} = 5.19$, $SE_{disparagement} = 0.16$) than video mediation ($M_{breach} = 4.63$, $SE_{breach} = 0.12$; $M_{disparagement} = 4.30$, $SE_{disparagement} = 0.13$), $p_{breach} = .005$ and $p_{disparagement} < .001$, and text-based mediation ($M_{breach} = 3.40$, $SE_{breach} = 0.16$; $M_{disparagement} = 3.01$, $SE_{Disparagement} = 1.73$), ps ranging from < .001 to .003, with the latter two also differing significantly, ps < .001 (see Figure 2 for the interaction in the contract breach case and Figure 3 for the disparagement case). When the attorney recommended text-based mediation, we observed no significant differences in ratings for in-person mediation ($M_{breach} = 4.29$, $SE_{breach} = 0.14$; $M_{disparagement} = 4.02$, $SE_{disparagement} = 0.16$), video mediation ($M_{breach} = 4.54$, $SE_{breach} = 0.12$; $M_{disparagement} = 4.34$, $SE_{disparagement} = 0.12$), or text-based mediation ($M_{breach} = 4.41$, $SE_{breach} = 0.17$; $M_{disparagement} = 4.33$, $SE_{disparagement} = 0.17$), all ps ≥ .273.

Figure 2

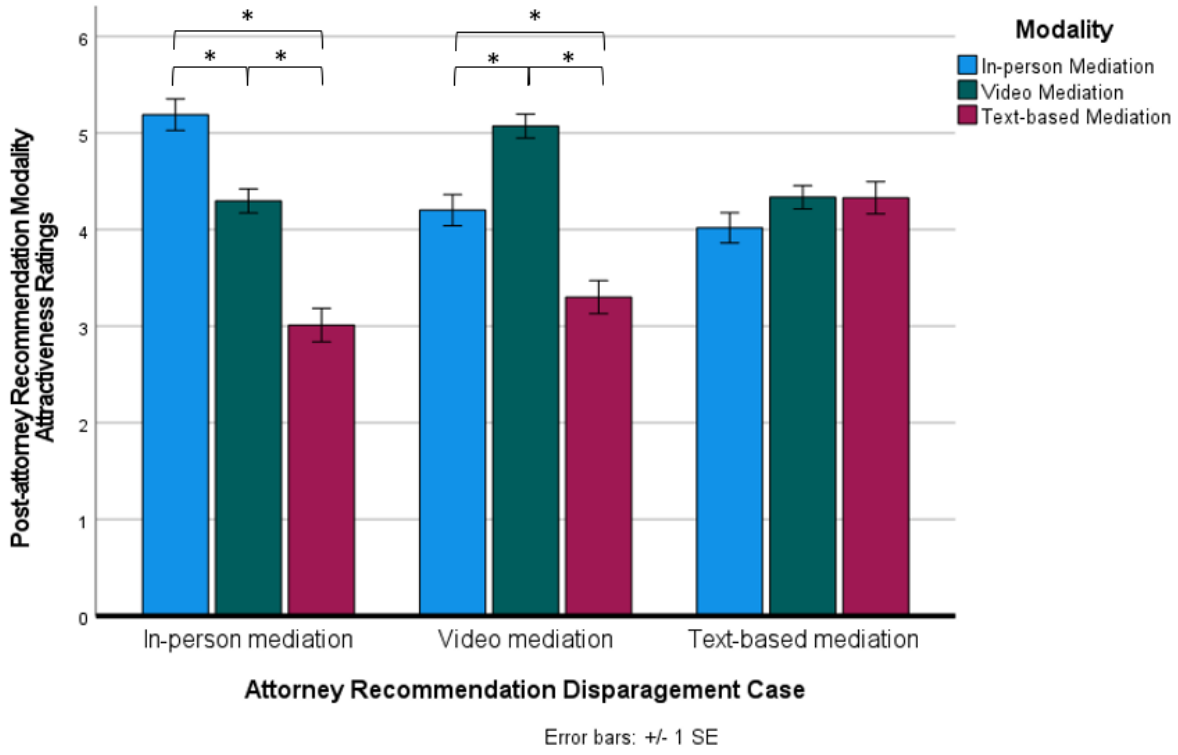
Interaction between Attorney Recommendation and Modality Attractiveness Ratings in Contract Breach Case



Note. * $p < .01$

Figure 3

Interaction between Attorney Recommendation and Modality on Modality Attractiveness Ratings in Disparagement Case



Note. * $p < .01$

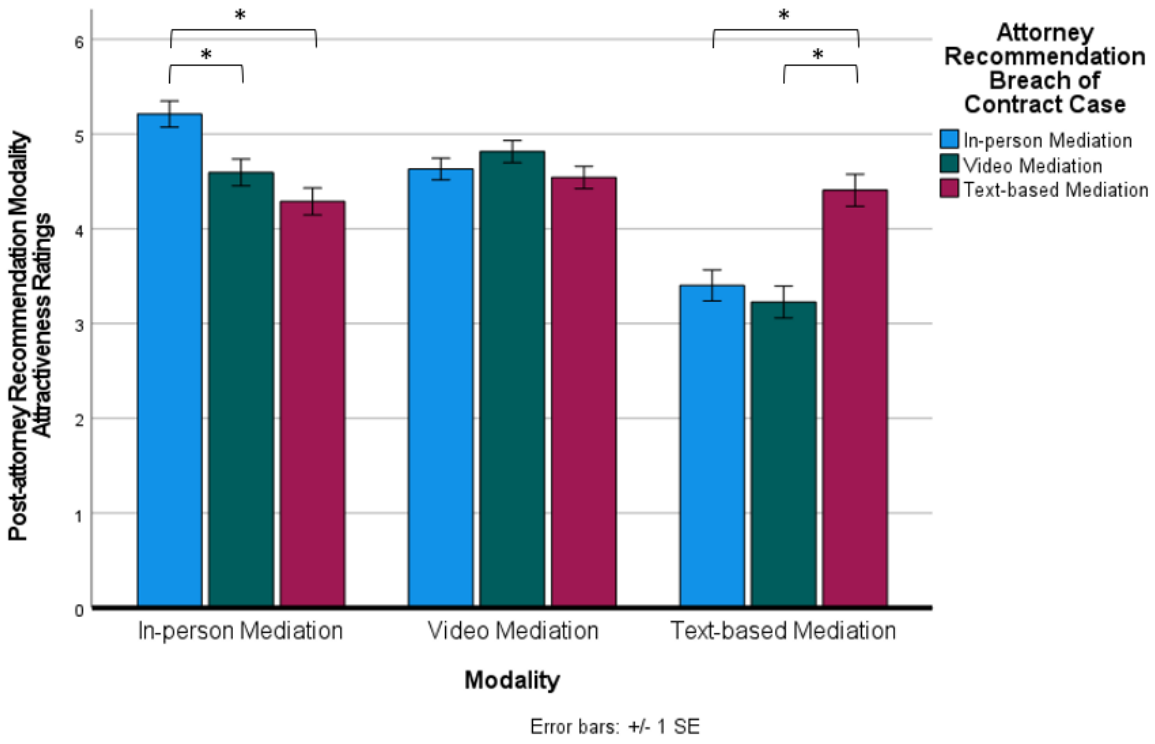
This lack of difference between modality preferences when the attorney recommended text-based mediation appears to be explained in part by a significant increase in text-based mediation ratings: When participants were told their attorneys recommend text-based mediation, text-based mediation was rated as higher compared to when in-person or video mediation was recommended, both *p*s < .001, with no significant difference between the latter, $p_{breach} = .793$ and $p_{disparagement} = 0.711$. Although this is the expected result (i.e., an increase in ratings when the attorney recommended said modality), this effect was only large enough to raise ratings to be equal to those for in-person and video mediation, but not large enough for people to find text-based mediation more attractive than in-person or video mediation. The expected results also emerged for in-person mediation, where ratings increased significantly when participants learned their attorneys recommended it compared to when they were told their lawyers

recommended video or text-based mediation, *p*s ≤ .006, with no significant difference between the latter two options, p_{breach} = .385 and $p_{disparagement}$ = 1.000.

Post hoc analysis findings revealed differences between the two cases for video mediation. In the contract breach case, when the attorney suggested video mediation, participants viewed text-based mediation (M = 3.23, SE = 0.17) less favorably than both video (M = 4.82, SE = 0.12), $p < .001$, and in-person mediation (M = 4.60, SE = 0.14), $p < .001$, but the latter two did not differ significantly from each other, $p = .630$ (Figure 4). Video mediation was, therefore, the only mediation modality for which attorney recommendation did not influence ratings, all *p*s ≥ .304. In the disparagement case, when attorneys recommended video mediation, higher ratings emerged for video mediation (M = 5.07, SE = 0.12) than for in-person mediation (M = 4.20, SE = .16), $p < .001$, and text-based mediation (M = 3.30, SE = 0.17), $p < .001$, with the latter two differing significantly, $p = .006$. Similar to what was observed for text-based and in-person mediation, ratings for video mediation increased significantly when attorneys recommended it compared to when attorneys suggested either of the other two modalities, *p*s < .001, with no significant difference in ratings observed between the latter, $p = 1.000$ (Figure 5).

Figure 4

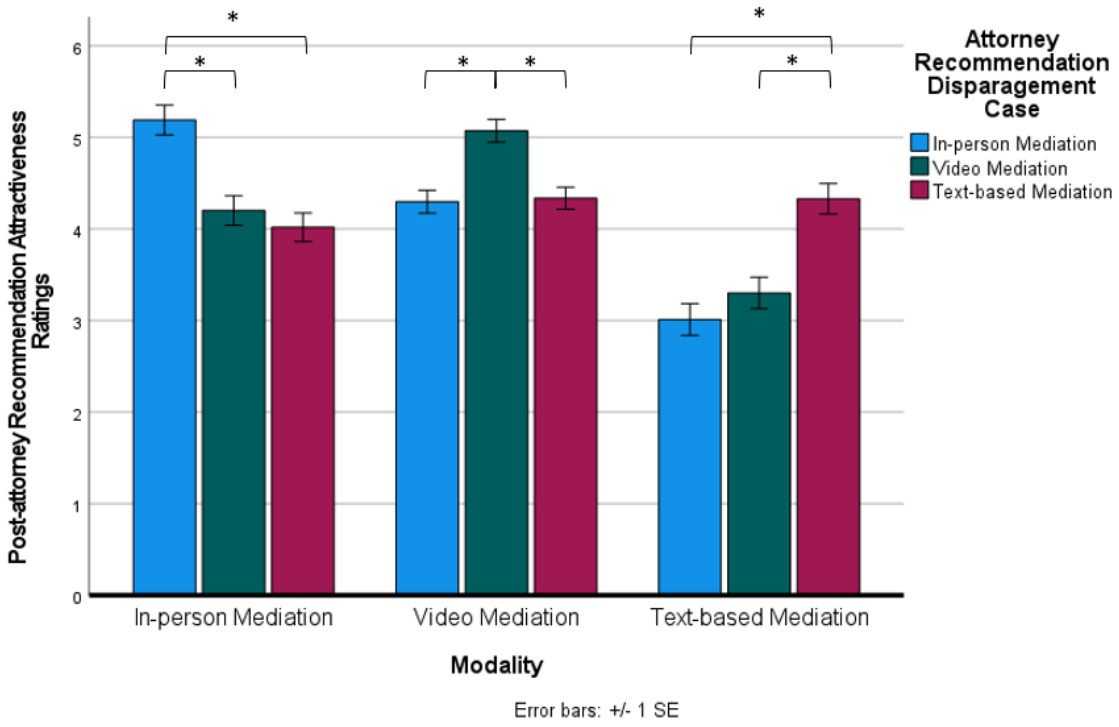
Interaction between Modality and Attorney Recommendation on Modality Attractiveness Ratings in Contract Breach Case



Note. * $p < .01$

Figure 5

Interaction between Modality and Attorney Recommendation on Modality Attractiveness Ratings in Disparagement Case



Note. * $p < .001$

Finally, the three-way interaction between attorney recommendation, communication style and mediation modality failed to reach significance for either the contract breach, $F(3.13,398.81) = .028$, $p = .995$, $\eta p^2 = .00$, or the disparagement case, $F(3.15,402.15) = .759$, $p = .524$, $\eta p^2 = .01$.

These results provide partial support for our final hypothesis, which stated that parties would prefer the modality their attorney recommended: Across both cases, attorney recommendations increased participants' interest in the recommended modality (with the exception that an attorney recommendation of video mediation did not influence video ratings in the contract breach case). However, although attorney recommendations favoring text-based mediation increased its attractiveness rating, the increase was not sufficient for it to be preferred over either of the other modalities. In addition, when attorneys

recommended video mediation for the contract breach case, it increased its attractiveness ratings to the same level as those for in-person mediation, but it was not preferred.

Importance of Decision-Making Factors as Predictors

To explore the relationship between decision-making factors and attitudes toward the modality options, we analyzed how well the participants' ratings of the factors predicted their views of the mediation modalities. Means and standard deviations for those ratings are shown in Table 1. Note that these factors were rated on a 6-point scale. To determine which factors ultimately predicted participants' attraction ratings, we conducted seven simple regressions using the importance ratings of the various factors as predictors and the pre-attorney recommendation attractiveness ratings of each mediation modality as outcome variables. To account for the multiple regressions, an alpha correction of .025 was applied, as every outcome was included in two regressions (i.e., once in the contract breach case and once in the disparagement case). The combination of predictors was significantly related to all attractiveness ratings, Fs all above 3.30, ps all below .002, and adjusted R^2 ranging from .06 to .16. Tables 2 and 3 report full breakdowns of all factors for the contract breach and disparagement cases, respectively.

Table 1

Means and Standard Deviations Pre-attorney Recommendation Preference Predictors

	Contract Breach Case		Disparagement Case	
	M	*SD*	*M*	*SD*
The time it takes to resolve the case	4.82	1.13	4.99	1.06
Cost	5.51	0.79	5.02	1.14
The opportunity to share my side of the story	5.59	0.77	5.69	0.73
The ability to present evidence or information in my favor	5.62	0.80	5.78	0.56
Maintaining a relationship with the other party	3.56	1.43	2.30	1.46
Expressing my emotion about the case	4.12	1.54	4.69	1.38
The ability to avoid direct interactions with the other party	3.28	1.51	3.98	1.51

Table 2

Statistics for Pre-attorney Recommendation Preference Predictors—Contract Breach Case

	In-person mediation				**Video mediation**				**Text-based mediation**			
	β	*t*	*SE*	*p*	*β*	*t*	*SE*	*p*	*β*	*t*	*SE*	*p*
The time it takes to resolve the case	.17	2.33	.07	.021*	-.08	-1.14	.07	.256	-.12	-1.30	.10	.193
Cost	.01	0.13	.10	.900	-.03	-0.31	.10	.755	.00	-0.02	.13	.984
The opportunity to share my side of the story	-.01	-0.10	.11	.920	.13	1.17	.11	.242	-.23	-1.60	.15	.112
The ability to present evidence or information in my favor	.19	1.72	.11	.087	.18	1.66	.11	.098	.12	0.84	.14	.401
Maintaining a relationship with the other party	.15	2.68	.05	.005*	.12	2.17	.05	.031	-.06	-0.79	.07	.430
Expressing my emotion about the case	.01	0.62	.05	.807	.13	2.62	.05	.009*	-.07	-1.11	.07	.268
The ability to avoid direct interactions with the other party	-.26	-4.84	.05	<.001*	-.08	-1.50	.05	.136	.29	4.24	.07	<.001*

Table 3

Statistics for Pre-attorney Recommendation Preference Predictors—Disparagement Case

	In-person mediation				**Video mediation**				**Text-based mediation**			
	β	*SE*	*t*	*p*	*β*	*SE*	*t*	*p*	*β*	*SE*	*t*	*p*
The time it takes to resolve the case	.04	.09	0.42	.672	.15	.08	1.92	.056	.20	.10	2.05	.042
Cost	-.12	.09	-1.40	.162	-.13	.07	-1.86	.065	.03	.09	0.28	.778
The opportunity to share my side of the story	.29	.14	2.03	.044	.31	.12	2.58	.011*	-.26	.15	-1.68	.094
The ability to present evidence or information in my favor	-.02	.19	-0.08	.935	-.28	.16	-1.77	.078	.25	.20	1.22	.224
Maintaining a relationship with the other party	.11	.06	1.90	.059	.14	.05	2.72	.007*	-.03	.07	-0.45	.656
Expressing my emotion about the case	.05	.07	0.73	.467	.17	.06	2.97	.003*	-.13	.07	-1.81	.071
The ability to avoid direct interactions with the other party	-.39	.06	-6.71	<.001*	-.02	.05	-0.41	.680	.31	.06	4.86	<.001*

Across both cases, the importance participants placed on avoiding direct interaction with the other party significantly predicted heightened interest in text-based mediation and lower interest in in-person mediation. Moreover, the desire to avoid direct interactions was the only significant predictor for text-based mediation attractiveness ratings for both cases. The importance they placed on expressing emotions about the dispute significantly affected their ratings for video mediation only. Perhaps participants who felt strongly about expressing their emotions envisioned greater comfort in doing so from behind a screen, as opposed to through direct interaction in the same room with the opposing party (i.e., in-person mediation). This possibility suggests that they might perceive a synchronous setting, as opposed to an asynchronous one (i.e., text-based mediation), as offering a greater opportunity for their voice to be heard.

Participants' interest in maintaining a relationship with the other party significantly predicted their attraction to in-person mediation only in the contract breach case and to video mediation only in the disparagement case. In the contract breach case, litigants were described as coworkers, which implies they would be expected to cooperate in the future, presumably in-person. In the disparagement case, the more personal nature of the dispute may have increased the attractiveness of video mediation, which offers some comfort and safety behind a screen. In line with this argument and the value participants placed on sharing emotions in video mediation, the opportunity to share their side of the story reached significance only for the disparagement case and only for video mediation ratings. This factor may be more important in the disparagement case because it involved an attack on reputation and character, where emotions and the need to save face may understandably run higher. Video mediation may feel safer than in-person mediation, while also not sacrificing the ability to be heard that participants may perceive occurs in text-based mediation. Finally, the time it takes to resolve a case significantly predicted participant attraction to in-person mediation only in the contract breach case.

Importantly, the factors that significantly predicted attractiveness ratings tended to be emotional in nature (e.g., the ability to avoid direct interactions, the opportunity to share your side of the story, and expressing emotion about the case). Two of the more practical reasons— cost and ability to present evidence or information in their favor—never reached significance, though both were rated as very

important overall (ranging from 5.02 to 5.78 on a 6-point scale), which may reflect a ceiling effect. It is important to note, however, that the "opportunity to share your side of the story" factor was also rated as very important overall and *did* reach significance).

Discussion

We aimed to explore how individuals compare traditional in-person mediation with video-based and text-based alternatives across different types of civil cases, and the influence of attorney recommendations and litigant communication style (i.e., polite versus antagonistic) on these evaluations. Overall, before receiving any attorney recommendations, participants rated text-based mediation as least attractive for both cases we investigated but regarded in-person mediation as the most attractive for the contract breach case and video mediation as most attractive for the disparagement case. Although these ratings were generally not influenced by communication style, attorney recommendations generally increased the perceived attractiveness of a mediation modality.

Attorneys Matter Most of the Time

Attorney recommendations generally augmented how attracted participants were to different mediation modalities. On this front, our results align with previous research suggesting that clients rely on their attorney for guidance and expert advice regarding both strategy and decisions regarding procedural choice (Korobkin & Guthrie, 1997-1998; Mather, 2003; Shestowsky, 2018) and, ultimately, often choose procedures based on their lawyer's recommendation (McCormack & Bodnar, 2010; Shestowsky, 2018). What is novel about our findings is that attorney recommendations influenced modality selection even when holding the procedure type constant, as we did here by examining only mediation options. To our knowledge, ours is the first study to document such an effect. The practical significance of this finding is heightened by the fact that ODR is a rapidly expanding area in the civil justice area, but the risks and benefits of these options from the litigant perspective remain unclear.

One way lawyers add value to the lawyer-client relationship is their procedural knowledge, including what each procedure entails and can accomplish, which they can use to educate and counsel litigants (see Blankley et al., 2021). For emerging ODR procedures, such an advantage may be muted or

attenuated, as lawyers themselves may not know much about ODR. Our results suggest that litigants might rely on their lawyers' perceived authority even in nascent areas, such as ODR modality choice, where the knowledge gap between lawyers and litigants may be small. This lack of experience with ODR may lead lawyers to be hesitant to suggest ODR to their clients. This speculation is supported by older research demonstrating that lawyers are less likely to discuss (in person) ADR options with litigants when they are less familiar with and have less experience with those procedures (Wissler, 2002).

Our findings also raise questions about how attorneys discuss dispute resolution options with their clients. The prevailing model of attorney-client relationships is client-centered (ABA Model Rule of Professional Conduct, Rules 1.2 and 1.4; Binder et al., 1990). In this model, a lawyer's role is to assist the client in maximizing their autonomy and to provide advice that furthers the client's goals without supplanting the clients' interests with their own (Freedman, 2011; Mather, 2003). In the current study, participants did not gain additional information about available procedures, nor were they provided with a rationale for their attorney's recommendations. Thus, the attitude shifts we observed seemed to result from simple acquiescence to the lawyer's viewpoint. Moreover, while it might be assumed that lawyers and clients have similar interests and values, existing research suggests this is sometimes not the case (O'Barr & Conley, 1988; Relis, 2007; Sarat & Felstiner, 1997; Shestowsky, 2018). Lawyers might, consciously or unconsciously, lean towards endorsing procedures or modalities that compensate (Wissler, 2002) or enable the attorneys to gain more experience with particular dispute resolution processes. Policies and attorney education on how to effectively counsel clients regarding ADR modality in client-centered ways should be developed for law schools, bar associations, and similar entities.

Despite our findings generally aligning with the prior literature, we discovered some notable exceptions to the influence of attorney recommendations. Most importantly, across both cases, when attorneys favored text-based mediation, it did not universally result in participants viewing text-based mediation as significantly more attractive than in-person or video mediation (although it did significantly increase its attractiveness ratings). In other words, although an attorney's advice to use text-based

mediation did increase its perceived attractiveness, the increase did not lead participants to view text-based mediation as significantly more attractive than either in-person or video mediation.

The Disadvantages of Text-Based Mediation

Notably, participants demonstrated a general ambivalence towards in-person and video mediation, expressing a preference for one over the other depending on the legal case being contemplated. In contrast, participants rather consistently perceived text-based mediation as relatively inferior compared to the other two modalities. Scholars have speculated as to why litigants might disfavor ODR. Litigants who are unfamiliar or uncomfortable with technology may experience feelings of disorientation, alienation, and misunderstanding when compelled to use ODR (Quek, 2019). ODR, compared to in-person dispute resolution, might also decrease the quality of justice in exchange for prioritizing efficiency and cost savings (Sourdin et al., 2019). Our participants may have felt that the efficiency exchange was too extreme for text-based mediation. Interestingly, time savings did not significantly predict participants' attractiveness ratings for text-based mediation. Additional research into this finding, including the efficacy of education campaigns on this issue, is warranted.

Scholars have expressed concerns that utilizing text-based dispute resolution methods might create a perception of the opposing party as anonymous, distant, and lacking individualization (Nadler & Shestowsky, 2006). On this basis, one could then speculate that text-based mediation may be more attractive in cases where communication is antagonistic. We did not find such an effect. In fact, parties in the contract dispute appeared to be more open to text-based ODR when communications were described as polite. The lack of such an effect may be an artifact of our stimuli in that the communication was described rather than experienced first-hand. The impact of hostility may be more pronounced when individuals directly hear or experience negative conversations. Alternatively, individuals may perceive that text-based discussions open the possibility for increased hostility as they permit individuals to communicate without visibly observing the recipient's reactions. Our research establishes a foundation for future investigations into these aspects.

Our results reveal three important aspects of how potential litigants evaluate text-based mediation. First, absent attorney communications regarding suggested mediation modalities, text-based mediation seemed unappealing. This finding is especially relevant to courts that are contemplating ODR programs in which litigants have cases like those explored in our study. If ODR is voluntary, courts might anticipate little interest in ODR if they offer a text-based platform. Importantly, offering text-based ODR has, in fact, been the trend in state courts (Ebner, 2012; Pearlstein et al., 2012). Second, when attorneys recommended text-based mediation, it increased how attractive participants viewed this modality, but not such that its attractiveness surpassed rankings of in-person or video mediation. Thus, voluntary text-based ODR programs might gain greater interest and party participation when attorneys communicate the value of a text-based system to their clients. Third, for the contract breach case, participants showed greater interest in text-based mediation when the parties have a polite communication history. The emergence of this effect in the contract breach case, but not the disparagement case, highlights the need for future research to delve into the underlying factors that contribute to this phenomenon.

Possible Limitations and Other Considerations

The contributions of the study should be viewed with its limitations in mind. Although we used two different case scenarios to ensure that our findings were not limited to the facts of a particular case type, both cases involved only one legal issue and had relatively low dollar values. Although these elements are typical in cases handled by small claim courts or courts of lower jurisdiction, examining reactions to lawsuits that are more legally complex and have a higher dollar value would add nuance to the findings and make them relevant to courts of general jurisdiction. Additionally, to break new analytical ground, we chose to focus on a single ADR procedure—mediation. The findings might not extrapolate to procedures that differ in formality, such as negotiation or arbitration.

Our study design does not permit us to tease apart the exact reasons for which participants disliked text-based mediation. Text-based mediation is not only asynchronous but also requires participants to draft written responses. Future research should examine how litigants perceive each of these aspects of text-based mediation to better understand our findings, for example, by comparing

asynchronous voice-memo-based communication options or a synchronous written text option. To our knowledge, no jurisdiction currently offers such modalities, but this work might guide future policy development in the ODR space. Future research should also examine additional case types, ADR procedures, and additional asynchronous but verbal ADR options to test the limits of the observed effects and more deeply explore the factors analyzed in the present study.

Another limitation of our project concerns the brevity and content of the attorney recommendation messages presented to participants. The advice participants received from their purported lawyers was brief and lacked detail and a rationale for the explanation. Because research on attorney-client communications is sorely lacking, it is not clear whether these brief communications are typical. Nevertheless, providing a more complex and personalized evaluation from counsel may have elicited a sharper response, with potentially more extreme attitude shifts. As such, the study serves as a conservative test of the effect of attorney recommendations.

Policy Implications

Our study has numerous policy implications. First, our findings underscore the importance of attorney education regarding ODR developments. Similar training is likely necessary for judges and court personnel, particularly given that many self-represented civil litigants rely on communications from the court or self-help offices to navigate their cases. Lawyers, judges, and court personnel play a vital role in helping guide parties through the complex labyrinth of the civil justice system and they themselves need to understand new procedural options as they develop. Researchers must do their part to advance our understanding of the litigant perspective on these developments, as we have attempted to do by conducting the present research.

Second, because of the influence they have on client decision-making, attorneys must strive to ensure that their preferences do not interfere with the priorities and goals of their clients (Freedman, 2011; Korobkin & Guthrie, 1997-1998; Shestowsky, 2018). ABA Model Rules of Professional Conduct 1.2 and 1.4 encourage client-led decisions, including "as to the means by which the client's objectives are to be accomplished." Attorneys should thus play a supportive role when consulting their clients and strive to

understand their clients' goals and lead them to procedures that advance their interests. Discussions on procedure are particularly important in the ADR arena, as research has shown that litigants are generally unfamiliar with alternative dispute resolution mechanisms (Blankley et al., 2021). Such efforts shadow our findings, suggesting that litigants often follow their attorneys' recommendations, regardless of their initial preferences.

Third, given courts' rapid adoption of text-based mediation (Ebner, 2012), our results suggest that courts should consider whether litigant training and education can render this modality more palatable to laypeople. Courts should engage researchers to empirically study their litigant training and education tools to determine whether they impact litigants' understanding of and attitudes towards ODR. Results from this work might inform lawyer-client procedure discussions in light of our finding that attorneys' recommendations for non-text-based mediation further solidified litigants' dislike of text-based mediation. Moreover, if text-based mediation is the future of ODR (see Pearlstein et al., 2012), law school and continuing legal education programs should train attorneys to effectively assist their clients in resolving disputes using this modality. And, given that many people cannot afford legal counsel, courts should be equipped to educate parties directly so that they can prepare to represent themselves.

Promising Directions for Subsequent Research

Future research should strive to advance researchers' understanding of the litigant viewpoint on ODR in several ways. First, ODR is currently gaining in popularity for cases concerning child custody and parenting matters. Research that explores how lay people view ODR and attorney advice in this area, known for its high conflict nature, would have significant policy implications. Second, ODR could focus on clients' satisfaction with an attorney's services based on the alignment of the attorney's recommendation with their own preferences, values, and goals. Third, in the current study, answer options for the question probing personal experience with the various modalities consisted of a 4-point Likert scale. Given that we found that prior experience with in-person mediation related to decreased ratings of text-based mediation, it appears that prior experience may solidify preferences for certain ADR modalities. To better reflect a more externally valid measure and to further probe this finding, future

research could also ask a binary question to assess personal experience. Fourth, given that we discovered a notable exception to the influence of attorney recommendations when text-based mediation was recommended, our findings should motivate future work that explores reasons for this resistance to text-based mediation. Fifth, researchers should extend our work by assessing other ADR procedures, such as negotiation and arbitration. Alternatively, future studies could also assess the impact of having a mediator who is a judge versus a non-judicial officer to determine whether this factor affects litigants' experience with online mediation (Goldberg et al., 2009). We hope the current study lays the groundwork for a more nuanced investigation in this important area.

Conclusion

Our results suggest that clients have clearly delineated levels of interest in different mediation modalities before they receive attorney advice, but that, for some modalities, attorney recommendations affect their degree of interest. These results highlight the critical importance of attorneys understanding the different ADR modalities, knowing how to analyze the benefits and risks of each for specific clients and cases, and educating their clients thoroughly. A lawyer's ability to accomplish these tasks effectively will depend on the availability and dissemination of research examining the pros and cons of text-based and video forms of dispute resolution from the litigant perspective. Importantly, empirical research findings can also help courts design programs that appeal to those whose needs they are meant to serve. We hope the present study inspires future research that moves the legal system toward becoming a space in which all litigants are fully informed participants as they seek civil justice.

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