

A Mediator's Journey
Michael Lang
Real Mediators' Real Mediation Models
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[Michael Lang](#) is a mediator trained in law and therapy who handled marital and workplace disputes as well as cases involving organizations. He focuses on satisfying parties' intrinsic needs – such as identity, relationship, and process – as well as the extrinsic goal of a successful outcome. Michael teaches and writes about reflective practice and facilitates eight monthly reflective practice/case consultation groups.

Context of My Mediations

My Background, Training, and Experience

Not long ago, talking with my brother about the motivation and passion that has driven our respective careers, he described some of the earliest influences that shaped the course of his work as an artist. He knew, as prescient children often do, that from the time he was 9 or 10, he would be an artist. I asked him whether he thought I was destined to be a mediator. Laughing wildly, he replied, “Duh, of course.” My natural follow-up question was, “Tell me. What did you see?”

He reminded me that I was the kid who wanted to solve problems, particularly for others. In difficult situations, I was a calm, engaged observer. Quietly, I would listen to conversations. (I remember worrying that I was just an eavesdropper.) I cared about other people’s troubles. I would be upset over situations that seemed unjust and unfair. He was right, of course. His memory is impeccable.

Reflecting on our conversation, I tried to identify who and what shaped my attitudes. My mother, certainly. Her compassion for others and uncompromising embrace of everyone was a model of decency, grace, kindness, and tolerance. My father was the consummate problem-solver. He embraced challenges, and he waded into them with confidence and a dogged determination to turn the problem into a solution.

One story dominated my family’s narrative: my grandfather’s emigration to America in 1911. He came to the US to escape the repeated pogroms and the dire poverty of his village in Lithuania. Once established in the US, he brought his parents, fiancé and as many of his family and friends to America as possible – nearly 150 in all. Every Jew who remained in Kovarsk after the late 1930s perished during the Holocaust. Those events, occurring before my birth, left a deep and permanent impression, shaping my commitment to battle injustice and defend the weak.

So becoming a lawyer seemed a better fit for my exuberant and passionate commitment to fairness and justice despite my father's campaign for me to become a physician and my flirtation with a career in urban planning. I entered law school in the mid-1960s. The events of the civil rights crusade and subsequently the anti-war movement were key factors in my decision to become a fighter for justice. That's how I saw myself – joining the ranks of attorneys who stood for fairness, decency, and equality. I aspired to join those fierce lawyers defending people who endured prejudice and experienced violence in the pursuit of racial justice. During law school and as a legal services attorney in Newark, New Jersey for several years following graduation, I worked on behalf of people who had been continually beaten down by a system that either trampled on or ignored their needs and concerns. I specialized in representing tenants and I assisted in the creation of tenant organizations and advocated on their behalf.

After four years, I left that work and became a small-town lawyer in Maine. Social justice issues did not feature in a practice largely involving drafting wills, probating estates, closing real estate transactions, acting as counsel to a small (900 people) community, and representing clients who were separating or divorcing. I saw myself as a problem-solver as much as an advocate. I sought to avoid a win-lose outcome, especially in family matters. I worked to create solutions that suitably addressed my clients' interests while also acknowledging and responding to the other parties' concerns. Though a difficult balancing act in both ethical and practical terms, it intuitively made sense to me.

A Slow Transition Toward Mediation

For three years in the mid-1970s, I studied transactional analysis and gestalt therapy. In the mid-1980s, I studied family therapy, focusing on the application of systems theory. Thereafter, systems analysis became central feature of my mediation practice. Its principles provided a structure for understanding and responding to all sorts of conflict situations.

I became a mediator in 1978 when colleagues in the therapy training course began referring couples to me hoping I could "represent the marriage" – an ethical impossibility, of course. I proposed, and the clients readily agreed, that I would help them sort out the issues in their divorce but I would act as attorney for only one client.

Building a mediation practice in Maine in the late 1970s and 1980s was difficult. Few people understood what mediation involved, often confusing it with the practice of meditation, and lawyers nearly universally rejected the idea. I was able gradually to shift from legal representation into mediation. In those early years, I mediated mostly separation, divorce, and post-divorce conflicts, with occasional forays into commercial, workplace, and public policy disputes.

My approach, described below, blended what are now known as facilitative methods that I learned in therapy training with constructive problem-solving. Central to this

approach is a steadfast commitment to the principle of self-determination, which was a fundamental component in the therapy training courses.

A Further Shift – Becoming an Educator

In 1989, a colleague invited me to co-create a four-course certificate program in conflict resolution sponsored by a local university as part of its community education outreach. I had been a clinical instructor at Rutgers Law School for 18 months in the 1970s, and I had delivered conference presentations and seminars. My enthusiasm grew and deepened as I developed the certificate program.

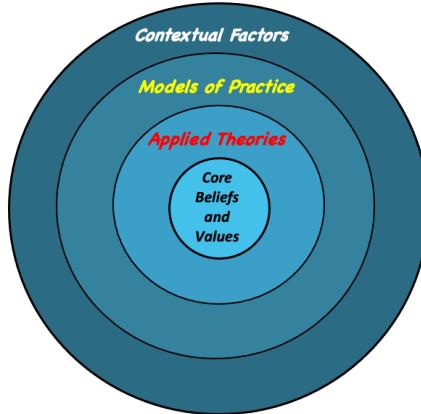
In 1992, I became a full-time academic. I was hired by Antioch University, in Yellow Springs, Ohio, to create and direct a master's degree program in conflict resolution. From 1998 to 2001, I served in a similar role at Royal Roads University in Victoria, British Columbia. Throughout this period, I built a small practice addressing workplace disputes, including mediation and training.

I continued to practice family and workplace mediation until the end of 2019, when I retired from active mediation practice.

Reflective Practice

My interest in reflective practice began in 1985 and has been at the heart of my work ever since. Studying, writing about, and teaching reflective practice influenced my approach to conflict situations in two crucial respects. First, interactions in mediation are opportunities for learning through purposeful reflection. This allows mediators to understand which actions were helpful and which were unsuccessful – and, most importantly, why. This may occur during the mediation or, more often, following a session. Learning through reflective practice sharpens our skills and improves the quality and effectiveness of our interventions. Second, reflective practice is grounded in the notion that theory is fundamental to shaping our practice choices. Theory in this context broadly includes personal values, core beliefs, principles of professional practice, and learned theories (e.g., communications, systems, conflict management).

The Constellation of Theories below is a simple illustration of the collection of ideas, beliefs, principles, values and theories that, like lenses influence what we acknowledge and focus on, shape our perceptions, and determine the meaning we give to events and behavior. I believe that theory – in this broad description – is the heart of every practitioner's model of practice.



In addition to numerous articles, I wrote [two books on reflective practice](#): *The Guide to Reflective Practice in Conflict Resolution* (2019) and *The Making of a Mediator: Developing Artistry in Practice* (2000) (with Alison Taylor). The latter is the source for the Constellation of Theories.

Along with Susanne Terry, I recently formed the [Reflective Practice Institute](#), a collection of practitioners committed to the principles and methods of reflective practice as applied to mediators, coaches, facilitators, and other conflict engagement practitioners.

I currently facilitate eight monthly reflective practice/case consultation groups for mediators, conflict coaches, and others involved in conflict practice. With the widespread availability of video conferencing, participants include practitioners from the US, Canada, Europe, Africa, and the Caribbean.

Types of Cases and Participants in My Mediations

At the outset, I exclusively mediated marital disputes – separation, divorce, and post-divorce – which I continued to mediate until I retired from practice. In addition, I was asked to mediate workplace disputes – mostly employment discrimination and wrongful termination matters. The addition of workplace disputes stemmed from my role as senior trainer for the Department of Veterans Affairs mediation program. A smaller, but significant, portion of my work dealt with disputes within organizations including businesses, not-for-profit groups, and university departments.

For family disputes, unsurprisingly, the parties were spouses or partners. Rarely, an older child or other family member would participate.

For most of my practice, I mediated directly with the parties. They seldom asked attorneys to participate even though they nearly always sought advice with respect to the terms of settlement agreements. Family mediation in Florida was a notable exception to this pattern, as it was customary for Florida attorneys to accompany their clients in mediation.

In workplace disputes, the parties usually were the complainant and an employer representative (usually, a human resource official). Typically, neither party was represented by an attorney, although occasionally a party consulted counsel by phone during a mediation.

Common Patterns of Conflict Before and During My Mediations

In family disputes, there was no obvious pattern. Most couples had extended, often tortured and unproductive, conversations prior to mediation, as they attempted to resolve differences about finances and parenting. Some couples experienced such bitterness and mistrust, or a general disinclination to talk, that mediation was the only place they were able to talk with one another.

In probate cases, family members (usually siblings) who disputed the disposition of an estate tried to have “family meetings” or engaged in other problem-solving exercises. Typically, they hoped to retain family relationships as they struggled to resolve their differences. Alliances and grievances, some dating back decades, often figured in their inability to find practical solutions.

Workplace disputes mostly followed a simple pattern. Either an employer had taken an action that the employee disputed (e.g., terminating employment, imposing some discipline, or failing to promote) or the employee had a complaint about the actions of a co-worker or supervisor. The pattern of the dispute and the initiation of mediation nearly always depended on the unique disputing process established by the employer. Mediation was scheduled only after unsuccessful efforts at informal (or, rarely, formal) efforts by a supervisor or the human resources department.

Common Patterns of Parties’ Goals, Interests, and Positions in My Mediations

In marital disputes, the parties’ avowed goal was the settlement of financial and parenting arrangements in the context of a separation, divorce, or post-divorce dispute. This was the extrinsic goal. Additionally, and in nearly all such disputes, there were intrinsic goals of relationship, identity, and process. Separating or divorcing couples nearly always were concerned with their relationship in connection with parenting or continuing financial dealings, matters of future decision-making, communication, and problem-solving. In terms of identity, establishing fault – who is the wronged party, who is to blame for the separation/divorce – also arose in some cases. Identity goals sometimes involved parties’ perception of themselves (for example, as a parent, provider, or as someone re-entering the workforce). Process goals sometimes involved reworking their patterns of communication in the context of problem-solving discussions.

My Approach to Mediation

My Core Values and Goals in Mediation

My model, or approach is based on the beliefs, values, principles and theories in my unique Constellation of Theories. I assess conflict situations and choose my responses according to these theories. For example, in my experience, people in conflict who seek mediation have a common objective – to find concrete solutions and, if at all possible, bring their dispute to an end. While I am mindful of this practical goal, it is neither the sole focus nor the driving force in my approach to mediation. I value parties' intrinsic needs – such as identity, relationship, and process – as much as achieving a specific outcome. [Tzofnat Peleg-Baker](#)'s research and writings on the importance of intrinsic goals confirms the relevance and value of the model I have used for decades.¹

Another fundamental principle is self-determination, the opportunity for parties to shape both the process and the outcomes. In practice, this means that I do not offer advice, suggestions, or recommendations. In difficult, intense, and protracted conflict situations, my resolve often is challenged. But I firmly restrain any impulse to offer suggestions because I believe parties can and should be encouraged to discern their needs, create and evaluate thoughtful proposals, identify the types and sources of information needed, and reach their own decisions without my influence. Each of us in the mediation has expertise. The clients' expertise involves an intimate familiarity of the dispute including its nature, history, and impact; knowledge about and experience with one another; and an understanding of the likely advantages and disadvantages of any settlement.

To help parties achieve their goals, my objective was helping them have a thoughtful, meaningful, and hopefully useful conversation. If we were successful working together, they would develop useful, relevant, and practical responses to their dispute.

My Routine Mediation Procedures

The intake process was based on the nature of the dispute, who was the initial contact, and (more recently) whether the mediation was conducted online or in person. I considered the mediation had begun when I received the first phone call or email message from a party or counsel.

I briefly spoke with all parties prior to the initial meeting unless the parties were represented, in which case I communicated with the attorneys. My goals were to introduce myself, answer questions about me and my approach to mediation, and gather limited information. I wanted to know about the nature of the dispute, who was involved, whether litigation had been initiated, and whether other efforts had been made to resolve the dispute. I didn't seek – and preferred not to hear – stories about the

¹ Tzofnat Peleg-Baker & Michael Lang, [A Structured Reflection for Improving Third-Party Interventions and Mediation Practice: Reconsidering Debrief](#), CONFLICT RESOL. Q. (forthcoming).

conflict. Telling the story of the conflict, including its history and impact, are best done in a joint meeting so that each person hears the other's stories, concerns, proposals and other comments, when I hear them for the first time. This approach bolsters the idea that mediation is a collective effort in which we each have important roles. As well, I didn't want either party to suspect the other has poisoned the well with tales of alleged misbehavior.

For family mediations where attorneys were not involved, I also asked a series of questions to screen for possible intimate partner abuse.

If I had been contacted by attorneys, I often asked about the state of the parties' communications, especially whether there was any reason they would have difficulties participating in joint meetings.

My default approach was to meet in joint session, relying on private meetings only when strategically useful. I occasionally communicated proposals or other messages while parties were in private meetings. However, I preferred for parties and their counsel to express and to hear those messages directly. I believe that direct communication enhances the quality of communication and increases the likelihood that a thoughtful, responsive, and effective agreement will emerge.

Challenging Situations in My Mediations and How I Handle Them

I will limit my response to two types of challenging situations that arose frequently, though unpredictably: (1) parties and/or counsel lacking key data or otherwise being unprepared to engage in a productive conversation, and (2) parties and/or counsel who want to "speed through to a deal."

My first challenge was to suspend judgment about behavior that can be irksome, challenge my skills, or undermine potential progress in the mediation.

With seemingly unprepared parties, I first asked them to identify their goals for the mediation session. This question would clarify the reason for their apparent lack of preparation. For example, where lack of preparation affected their ability to address their goals, I explored whatever ideas, information, proposals, and concerns they were able and willing to discuss. I asked hypothetical questions such as, "If you had the information you need, what would it consist of, where might you obtain that material, and how would it help you to solve this problem?" I wanted to maximize the potential in the moment as well as set the stage for additional meetings.

When attorneys were pressing for a speedy resolution (or declaration of impasse), I convened a separate meeting with one or all counsel. I asked questions to understand the urgency to conclude the mediation. I couldn't be helpful unless and until I understood their motivation. Depending on their responses, I might use several techniques including: (1) asking how we can best use the available time to accomplish their clients' objectives, (2) inviting them to be patient and seek their agreement to

continue for a set period of time; after which, we will again assess progress and the likelihood of a successful conclusion, or (3) asking what they see as the prospects for making progress. Often, I used all three approaches.

Similarly with parties, I encouraged them to consider their goals, review what they hoped to accomplish, identify progress in achieving their goals, then ask whether they were willing to continue with the understanding we would review the situation in a set period of time. This discussion nearly always occurred in joint meetings.

Evolution of My Approach

As a beginning mediator in the late 1970s, I was concerned with helping the parties achieve an outcome because I wanted to satisfy the parties, affirm the value of mediation, establish my credentials, and secure referrals.

As mediation became more widely accepted and as my concerns about recognition and acceptance eased, I gained confidence in my abilities. I felt more at ease with the process and more confident that successful outcomes would emerge without my driving the process toward solutions. I modified my approach so that mediations became conversation about and exploration of the dispute and its resolution, always mindful of the parties' concern for a successful outcome.

Family therapy training profoundly shaped my thinking about the process of mediation and it crucially influenced my methods. This shift affected my intervention approach for all disputes, not just family matters. As noted previously, I learned the importance of theory in shaping my strategy and intervention choices and how to apply theory in making those decisions. I became more considered and less reactive, more strategic and less reflexive.

My approach also began to reflect the notion of being the “smallest pebble in the pond.” Any intervention in a dispute creates ripples. I wanted to be helpful while intruding to the least extent possible, and I focused on helping the parties gain the confidence and skills to address future disputes. This choice flowed from my commitment to self-determination and my belief that the best outcomes are those in which exploration by the parties leads to their own discoveries. I believe that encouraging their own thinking results in outcomes that are more relevant, responsive, and durable.

How My Trainings Have Affected My Mediation Approach

Questions from training participants have been a powerful influence on my approach to mediation. This is especially true in basic mediation courses where participants are unfamiliar with mediation methods and principles, even the language. They often ask seemingly straightforward questions that in fact touch on the essential values of mediation. A few examples: “If the mediator is an expert in child development, why can’t she offer a parenting plan?” “How do we know when parties have had enough and don’t want to continue?” “If parties are in private rooms and I’m asked to relay

information, do I use the person's exact language, or can I use my own words?" "Is it ever okay to trust a gut feeling?"

Before responding, I think about my own practice. Have I been in those situations? How have I responded, and why did I make that choice? Have I ever relied on instinct, if so, why and with what result? It is a matter of do as I say – be mindful, not reactive – rather than how I act? Have I ever nudged the parties toward a parenting plan because it seemed best for them? If so, what were the circumstances? Would I act similarly if presented with a comparable situation? The result of their questions and my reflections was a continued refinement of my practice, a process of ensuring that my methods were aligned with my beliefs.

Much of my teaching in the past 25 years has been built around my interest in reflective practice. My study of reflective practice dates to 1986 when I read *The Reflective Practitioner* by [Donald Schön](#) (1983). Reading the following passage from his book opened my eyes to the potential for building competency by learning from and through our experiences.

[T]he practitioner allows himself to experience surprise, puzzlement, or confusion in a situation which he finds uncertain or unique. He reflects on the phenomenon before him, and on the prior understandings which have been implicit in his behaviour. He carries out an experiment which serves to generate both a new understanding of the phenomenon and a change in the situation. (p. 68)

Teaching this process and the underlying theory always generates comments and questions that inspire me to engage in the sort of reflection Schön proposed about the application of these ideas and methods to my practice.

How My Mediation Approach Has Affected My Trainings

Many mediation training courses, especially basic programs, as well as numerous books about mediation, describe mediation as a process of stages or steps. In my experience, mediation never follows a programmed pattern. Instead, the process unfolds according to the unique circumstances of the dispute and – even more importantly – in response to the parties' interactions and their goals.

When I explain mediation, I describe the essential elements, including introducing the process, explaining about confidentiality, and describing roles; learning about the parties and their dispute through their stories; identifying essential information; presenting and evaluating proposals; and reaching agreements. However, I present (and trainees practice) mediation as a fluid process, shifting course repeatedly, not following a prescribed stages or steps, as the parties talk, gather and review data, and engage in the presentation and discussion of proposals.

In my practice, I learned the crucial skill of asking questions, especially those intended to prompt the parties' reflections and encourage elaboration. Elicitive questions have three key purposes. First, they encourage parties to broaden their thinking about the dispute and how it might successfully be addressed. Second, they help moderate the mediator's inclination to become more intrusive, interrogative, or directive. Finally, they demonstrate respect for the parties' expertise, their understanding of the dispute and one another, and the benefits and pitfalls of any settlement. Developing the skill of asking elicitive questions is a featured element in all my training courses.

In all my trainings, conference presentations, and webinars, I present the principles and methods of reflective practice that have shaped my practice. As mentioned above, there is a synergy between what I teach and how I practice. My training courses reflect both the skills and strategies I use, and they are grounded in the values and principles I employ.

What I Learned Writing This Document

The evolution of my thinking and methods, like the fluid mediation process I describe and practice, has been a journey with numerous detours and unscheduled stops. Yet, in retrospect, there is a discernable path that I've walked – one that has its foundation in constantly observing of certain values, beliefs, and principles. While I may have strayed from that path, more than once, I have strived to walk my talk.

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