

Why Do You Mediate the Way You Do?

John Lande
Isidor Loeb Professor Emeritus
University of Missouri School of Law
Center for the Study of Dispute Resolution

Why Do You Mediate The Way You Do?

- Why do you mediate the way you do?
- Probably most people who mediate regularly think they know.
- Today's program is going to see if you learn anything about your mediation approach.

Today's Agenda

- I'm going to lead you through an exercise asking you about yourself, the kinds of cases you handle, and your mediation procedures.
- After you answer these questions for yourself, we will break into small discussion groups.
- Then we will reconvene to discuss what you learned.

Going Back to School

- I will ask you a series of questions.
- Write your answers.
- Jot bullet points, not full sentences.
- Look up when ready for next question.
- At the end, we will discuss what you learned from this exercise.

Main Topics

- Your contributions to your mediations
- Participants and types of cases you mediate
- Your mediation practice system design
- Your reflections on your system

Your Mediation Practice System

- If you mediate regularly, you have a “mediation system”
 - Actions before, during, and after mediation sessions
 - Partially conscious and unconscious
- Factors affecting your system
 - Your history, values, motivations, knowledge, skills
 - Categories of cases, parties, and behavior patterns
- Design of your system
 - Routine procedures
 - Strategies for dealing with recurring challenges

Your Contributions

- What factors in your history, education, training, or experience led you to be a mediator?
Examples:
 - Family, teachers, role models, events
- What personal values and goals affect the way you mediate?
 - Respect, caring, communication, helping
- What benefits do you get out of mediation?
 - Satisfaction, respect, reputation, connection

Your Cases and Participants

- What kinds of cases do you mediate most often?
- Who are parties in your cases?
- How often, if at all, do lawyers participate?
- What are common patterns of conflict between parties? (eg, prior relationships, unsuccessful negotiation, barriers to agreement)
- What are common patterns of parties' interests and positions?
- What external factors affect your mediations? (eg, market, practice culture, org. policies, ethical rules)

Your Mediation System Design

- How do you prepare yourself for mediations?
- How do you prepare parties and/or attorneys?
- What are your routine procedures?
- What are common challenging problems?
- What are your strategies for dealing with these problems?

Your Practice of Reflection

- How has your mediation system evolved since you started?
- Do you regularly consider what you learn from mediations?
- Are you a member of a reflective practice group?

Your Insights

- **What are most important factors affecting how you mediate?**
- **What did you learn from this exercise?**
- **How can you improve your mediation techniques?**
- **Would it be worthwhile to work more on your exercise?**

Your Homework (if you want)

- Read *Ten Real Mediation Systems*
- Write description of your mediation system
 - No paper to submit or test to take
 - No grades
- Think more about how you work and how you might improve your practice system
- Join a reflective practice group

Resources

- [Real Practice Systems Project Series of blog posts](#)
- [Real Mediation Systems to Help Parties and Mediators Achieve Their Goals](#)
- [Ten Real Mediation Systems](#)
- [How Can Courts – Practically for Free – Help Parties Prepare for Mediation Sessions?](#)
- [Takeaways From “How Can Courts – Practically for Free – Help Parties Prepare for Mediation Sessions?”](#)