

Course 9, Module 2: Mediation Process Models

Lesson 4: Mediation Training-Scope of Instruction

A. What To Look For In A Basic Mediation Training by Diane J. Levin

As a practicing mediator, I frequently get phone calls from people who are interested in becoming mediators themselves. These people are motivated by a desire to help others, to transition into a more satisfying career, or to learn skills to help them do their current jobs more effectively. They come to me for help in finding a place where they can get training to help them achieve their goals.

What I typically discover is that the vast majority of these individuals do not know what questions they should be asking to help them choose the best training possible. They have no idea what they should be looking for in a training program. And that's a big problem. While there are excellent programs providing mediation training, there are also some training programs that are woefully inadequate.

My purpose in writing this article is to raise public awareness of the importance of doing your homework when it comes to making decisions regarding choosing a mediation training. Taking a mediation training constitutes an investment in your professional development, representing an important commitment of both time and money. The last thing you want is to waste either one of those precious commodities.

If you are interested in undergoing training to become a mediator, be an educated consumer and research trainers and training programs carefully before making a commitment. The following questions were developed to assist you in gathering the information

you will need to make an informed decision regarding the selection of an appropriate mediation training program.

1. What preliminary questions should I ask?

At present, there is no uniform regulatory scheme governing the practice of mediation, and, unlike other professions, such as law or medicine, there is no formal licensing or credentialing of mediators. States and governmental bodies such as courts set forth different requirements for mediators and mediation practice, so you should find out what requirements or qualifications standards for mediators are specified by the state you plan to practice in. (See Section 3, below, for information on Massachusetts.) A lead trainer or director of a training program should be familiar with these requirements.

Second, even within the field there are differing perspectives on how mediation itself should be defined and what constitutes the practice of mediation. You should be aware that there are different models and approaches—facilitative, transformative and evaluative—in mediation practice which define the mediator’s role in different ways. The facilitative is probably the best-known and most commonly taught. Be sure to find out what philosophy the training program utilizes and what core beliefs and values the program will teach participants.

Third, find out from the lead trainer what kinds of skills and techniques they believe are integral to effective mediation practice. Ask what the training will prepare students for upon its conclusion. Ask whether the program utilizes solo or co-mediation and why.

Fourth, in addition to inquiring about the program’s philosophy, it is also important to ask about the design of the mediation training program. How will skills and concepts be taught? What information will students receive on ethical guidelines and issues? What is the

student to teacher ratio? How is time allocated among presentation, group discussion, and application, including role-playing? What kinds of materials, including a manual, will be provided to students? What is the bibliography for this program?

2. What should I look for in a lead trainer and training faculty?

The Mediation Training Standards developed by the Massachusetts Association of Mediation Programs and Practitioners provide sound recommendations for trainer qualifications: “The mediation trainer should have extensive experience as a mediator in order to be accepted as a credible teacher and role model. Thorough knowledge of the mediation process and a mediator’s techniques and strategic choices is also essential.” Added to this should be a comprehensive understanding of the ethical rules governing mediator conduct.

Find out what you can about the lead trainer, other members of the training faculty, and their professional backgrounds. What kind of work do they do in the mediation field? What types of cases do they mediate? How long have they been mediating? What kind of advanced training have they had? How long has the organization offering training been providing mediation and training services? How many individuals have they trained?

Other essential qualifications to look for include whether the trainers:

- are active in the dispute resolution field through membership in professional associations, dispute resolution panels, and organizations committed to the advancement of dispute resolution**
- are committed to best practices and continuing education by regularly upgrading their skills and theoretical grounding on an ongoing basis through advanced training and attendance at conferences and other educational programs**

- **have a demonstrated commitment to the dispute resolution community through public awareness initiatives and support of other dispute resolution professionals**
- **through their connections in the dispute resolution community can help you identify and network with dispute resolution professionals and others who can provide mentoring, guidance, or information to help you get started in the mediation field**

I cannot emphasize how important these characteristics and qualifications are. Although the majority of organizations that provide mediation training are legitimate and are staffed by qualified trainers, there do exist mediation trainings that fall far short of accepted standards, so it is critical to find out all you can about the program and the trainers. Definitely request to see bios or resumes for trainers as well.

3. How many hours of training do I need?

The answer to that question depends upon what state you intend to practice in. Here in Massachusetts where I practice, state law specifies a minimum of 30 hours of training in order for mediators to be covered by the mediator confidentiality statute (Massachusetts General Laws Chapter 233, § 23C). In addition, the Supreme Judicial Court recently created Guidelines for Implementation of Qualifications Standards for Neutrals which set forth requirements for mediators in court-connected dispute resolution programs. These Guidelines specify a minimum of 30 hours of mediation training for mediators, with 36 to 40 hours recommended. The more hours of training that a mediation training provides participants, the more comprehensive and in-depth the training is likely to be.

To see what other states require, there is a draft report entitled State Mediator Rosters and Qualifications prepared by the Institute of Government, College of Professional Studies at the University of

Arkansas at Little Rock, which provides an overview of the requirements specified by the fifty states for mediators.

4. What should a training curriculum cover?

At a minimum, a basic mediation training curriculum will typically cover the following topics:

- Overview of ADR processes**
- Principles of mediation**
- Stages and goals of mediation process**
- The role of the mediator**
- Nature of conflict/behaviors in conflict**
- Mediation skills, including negotiation skills, interactive listening, question-asking, use of neutral language, reframing, interest identification, addressing barriers to agreement, agreement writing**
- Values and bias awareness**
- Cultural diversity**
- Power imbalance**
- Working with attorneys and representatives of parties**
- Ethical issues, including confidentiality, impartiality, informed consent, conflict of interest, fees, responsibilities to 3rd parties, advertising and soliciting, withdrawal by mediator**

This material is typically taught utilizing a range of teaching methods, including lecture, large and small group discussion, interactive exercises, and coached role-playing. Trainings should provide at least three opportunities for a participant to play a mediator in coached role-playing under the supervision of an experienced mediator, who will provide feedback to support and facilitate learning.

5. What happens after the training is over? How can I get experience and mentoring?

Before you take a basic mediation training offered through an organization, find out what opportunities are available to obtain mediation experience after the training is over. Such opportunities are available on a volunteer basis, typically in small claims cases at local district courts. Beginning mediators are teamed up with more experienced mediators for coaching and support in developing skills. This can be an effective way to build the skills you acquired through training and to become acquainted with others in the field. There is generally no cost to the volunteer mediator for participating in such a program, but you should be prepared to ask whether there are any costs or membership fees associated with volunteering.

In addition, organizations may offer a practicum to individuals who have completed a mediation program. A practicum provides intensive supervision and coaching to newly trained mediators by experienced and highly qualified mentors. Its purpose is to increase a mediator's effectiveness and support the acquisition, development and refinement of skills and techniques. Enrollment is usually limited, and organizations typically charge tuition for such programs.

6. What can I expect to pay for basic mediation training?

Cost can range from as little as \$600 for training offered through an all-volunteer community mediation program to several thousand dollars. In the Greater Boston area, for example, you can expect to pay in the \$650 to \$1800 range for basic mediation training.

A basic mediation training should be viewed as an investment in your professional development. And professionals such as social workers, psychologists, attorneys, and others invest in getting the education they need to perform their jobs effectively, including post-secondary and advanced degrees and continuing education. Aspiring mediators should do likewise in selecting carefully the training that will prepare them to become effective professionals.

Therefore, you should approach mediation training in the same way you would any other professional training by choosing a training program that will help you achieve your professional and personal goals. A quality mediation training may cost more, but it provides greater benefit in the long run.

7. Where can I get mediation training?

For those of you in the New England area, information on upcoming training programs may be found on the web site for the Association for Conflict Resolution, New England Chapter (NE-ACR), a non-profit association “dedicated to serving its members and the public by providing expertise and resources on the field of conflict resolution...[Its] members are mediators, arbitrators, facilitators and educators from different backgrounds and professions from across the six New England states.” NE-ACR’s goal is “to build the understanding and use of quality conflict resolution services.” Click on the link for “Regional ADR Calendar” under the heading “Calendar and Events” for a list of trainings offered around the New England area. However, be aware that NE-ACR cannot ensure the quality of the programs listed in its calendar—you still need to do your homework before making any commitment.

That's one way to find trainings. You can also contact the leaders of professional associations for dispute resolution practitioners in your area and ask them for their recommendations. The Association for Conflict Resolution is a good place to find local chapters in your area, as well as to locate professional mediators in your community. Find out from them what trainings they might recommend, and talk to a number of practitioners.

The important thing, however, is to be an educated consumer and do your homework. You'll be glad you took the time. A top-notch mediation training can be a powerful springboard to a successful career in the mediation field.

B. The Paradox of Creativity with Compassion in Mediation

by Evan Ash

Sometimes I hesitate to watch the news...so much injury and sadness is the focus of the reports. One day I looked on the internet to see what was the news in different cities, to see if the Kansas City area was different. I found that most on-line news stories in other cities had negative and upsetting content...all but Fargo, North Dakota. That day there the headline was about the local disk jockey's birthday!

In the negative news you typically see a call for justice in the form of punishment and self-righteous reprisal. "An eye for an eye..." But as Tevye, in *Fiddler on the Roof*, said, "If an eye for an eye and a tooth for a tooth, the world will be blind and toothless!" Something similar was observed by Ghandi.

A fully functioning, full-bodied world needs a different answer to how we can live and find the blessings of life. There has to be another way! Have you noticed how once and awhile in those local news stories you see a victim or their family praying for the person who caused their injury and loss. And do you wonder, where did that come from? We saw this last week where I live at the memorial for a promising 14 year old boy and his grandfather, gunned down by a fanatic at the Jewish Community Center. Here the community and family focused on celebrating the life of this two loved persons. They touched a lot of lives. Even one of my colleagues worked with the teen at their church. Any talk of retribution was buried in the news in light of the more newsworthy accounts of celebration and self-care.

Turn the other cheek, give more than is required, respond to the need of another person, all these when you may be faced with pain

and loss. Do crazy things like love your enemy, pray for them? The great mystery is the power that comes from the *paradoxes* of life.

Boundaries as Paradoxes

Here is a simpler, nearer to home example: why do we build fences around our backyards when we have children? I am sure you can come up with several practical reasons. But do you realize the message you send to your children when you build that fence? They are free to do anything within this fence. Boundaries give us freedom and purpose!

Within that fence, your children are stimulated by the boundaries to be creative... to make new worlds, to imagine places they have been or not been, to explore stories, to act out tales of adventure, and discover the wonder and fascination with an earthworm, a fallen bird's nest, an uncovered root or hole, a flowering bush. An empty box becomes a cave or a castle, a fallen limb or branch becomes a sword or a horse, a table becomes a mountain to climb. Such results are fostered when boundaries force us to see the world in its terms not just our own, to see the world, and ultimately ourselves for what we truly are. When we do not face any limits we are not required to develop those capacities that cause us to grow into our human spirit. The human spirit is fed by the challenges limits in life place upon us. Without those limits we do not build character and inner strength. Without those limits our souls will wither and die.

Compassion

The boundary I invite us to appreciate is compassion. “Compassion” in Latin means “co-suffering”. It is the capacity to accept, understand, and share the struggle of another person and their situation. It means a willingness to look beyond only one's self in situations, to include all that is taking place, including what exists

beyond the confines of you and your personal awareness, to see more than your needs and fears, to make room in your view of what is also taking place in the other person. Again, it means being willing to see more than yourself.

Yet, at the same time, ironically it means you will be able to see yourself more clearly as a result. The mystery of paradoxes!

Marshal Rosenberg, in his book *Nonviolent Communication*, gives us an example of how compassion helps us see more creatively. He quotes a Jewish therapist named Elly Hillesum who survived a World War II concentration camp:

“I am not easily frightened. Not because I am brave but because I know that I am dealing with human beings, and that I must try as hard as I can to understand everything that anyone ever does. And that was the import of this morning; not that a disgruntled young Gestapo officer yelled at me, but that I felt no indignation, rather real compassion, and would have liked to ask ‘Did you have a very unhappy childhood?, has your girlfriend let you down?’ Yes, he looked harassed and driven, sullen and weak. I should have liked to start treating him there and then, for I know pitiful young men like that are dangerous as soon as they are let loose on mankind.”[1]

Closer to home, I can think of my own challenges to be compassionate. In my work it comes easily as it is part of my sense of my work with families, as it has been with others over the 37 years of my priesthood.

But there are so many ordinary everyday examples, such as driving in traffic. A driver rushes past me on the interstate as we are driving along at 65 miles per hour, and cuts in front of me. It causes me to immediately apply the brakes. My blood pressure goes up, my eyes dilate, as a rush of adrenaline set me up for urgency. The stress

generates a fear of a collision and I feel energized and agitated, all initially expressed in anger and angry words I will not repeat here!

Sometimes I exercise compassion. I think: that person must be rushed by something of great concern to them. I begin to imagine different scenarios: others are counting on them, they are late to work? A child is alone somewhere waiting for a parent? Someone is ill and needs help?

I also know that perhaps they are just immature and their rash actions will cost them one day...I hope the lessons are not too costly...to them and others. And I find that as my spirit is exercised, my mind and body return to normal and I can get on with my life. Again, it means being willing to see more than yourself. Yet, at the same time, ironically it means you will be able to see yourself more clearly as a result. The mystery of paradoxes!

The creativity of compassion is my topic for today, And how it can be a paradoxical and productive tool for mediation.

Elements of Practicing Compassion

My primary work for the past 19 years has been with parents and family members. But my active role as a mediator began decades before. And I think we all long for those unexpected moments in a mediation session, especially in these intensely personal settings, when the two parties connect over a wide gulf of pain and struggle, be it an apology for a past hurt, a flash of recognition in the face of a party, or sudden tears. There is a sudden quietness that occurs that tells you this conflict has hopes of being resolved.

I recall a family, divorced for several years, dad asking for more time with his children and mom denying his request in this classic

scenario. Through court documentsdemeaning faults were highlighted And the conflict between the parents grew.

In our mediation session, as mom resisted his requests and dad’s tone became more demanding, I ask mom a question: “What do you think will happen if your children could spend more time with dad?” She quickly replied, “I won’t be able to count on him! He was never there! I had to do everything because he wasn’t around.”

I replied, “So you had to do everything.” She replied, “Yes and when there were problems, I had to fix them because he wasn’t there to help.” I replied, “And there were problems, sometimes big ones.” She replied, energized, “Of course, and they were sometimes hard to handle, especially by myself!” I responded, with some emphasis, “And those moments were overwhelming and sometimes frightening.” She quietly replied, “Yes, they were scary.” I quietly affirmed, “At those times you were afraid...”

Unexpectedly, dad jumped in, “She’s right...I wasn’t there much. I had to provide for her and the children. I don’t have a good education so I had to take jobs I could do and keep. They didn’t pay a lot so I had to have two jobs to make ends meet. But that is what a man does – he takes care of his family. She had to take care of the kids. I wasn’t home much except to sleep.” I replied, “You had to work a lot. It was what it meant to be a good man, a good husband, a good father. You were afraid you couldn’t provide for them.”

Dad replied quietly, in an awkward confessional tone, “yes...it was scary...” There was that hopeful silence between them. Then dad went on, “Now I have a better job so I only have to work one job. I have more time so I can be a better father to our children. I am just asking for a chance...”

This day the parents heard each other for the first time. Both had been afraid but they did not know it. From this came a different kind of discussion and they found ways for dad to play A larger part in the children's lives And mom got some relief so she could take care of herself.

Metaphors of Compassion

Consequently, as the mediator exhibits compassion toward each parent/party, it becomes part of the language of the mediation session.

John Haynes was a founding pioneer of our vocation as mediators. Before he died, he was working on a book on the role of metaphors in mediation. The content can be found in a series of articles on www.mediate-com.^[2] He described how people want to be heard in settings where the person has something at stake. When coming into mediation, parties are typically using language reflective of a warfare motif. Win, lose, battle, and more aggressive terms often characterize the way the conflict is approached. The legal system itself often fosters this outlook as the parties are primed by the language of courts, attorneys and motions.

However, when the mediator uses a different metaphor, and the remarks made to the person express that different metaphor, the parent or party, wanting to be heard, and will unconsciously adopt the language of the mediator's metaphor. The frame of reference during the session shifts.

If the metaphor of the mediator is selected to foster recognition of the value of each parent or party, and recognition of the worth of each of their challenges, a metaphor of compassion emerges. This metaphor expresses a sense of expectation and hope for them and

their situation, not diminishing the dignity and worth of each parent.

I personally like the metaphor of a journey. I guess it goes back to my own personal mission statement: I am walking the road with people going through a broken moment in their lives. A metaphor of compassion brings forth a new sense for life and relationship for the parties. The problem is not across the table, in the other person. Now both can look at the problem as a challenge they share. They discover they are cohorts facing the same thing, only from different perspectives because they are different people. A more realistic appraisal of resources and opportunities is now possible.

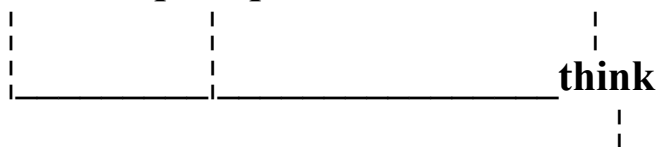
Disputes vs. Conflicts

It is often helpful to define the scope of the breakdown for the parents. This can be accomplished by recognizing the difference between a dispute and a conflict. While we often see these words used interchangeably, they actually are two different phenomena. A dispute is an event of disagreement. Conflict is the condition of a relationship.

The Challenge of Anger

It helps to recognize why compassion does not readily come into conflict. Consider how we experience events. The following diagram gives a simple description of the typical unconscious-to-conscious process leads to our actions. Perception interprets the nature of the experience and leads to the kinds of actions we may naturally take

sensation -> *perception* -> emotion -> body -> react



decide

|

respond

Hurts of the past are used to justify a divorce...to look at their “ex” with compassion challenges that justification. When a person feels threatened in some way, even if it is only the rejection of their idea of what is best in a situation, the fear it generates stirs pre-conscious energy aimed at defending one’s self. We call that emotional energy anger. Anger’s benefit is to foster distance from the threat by displaying behavior that, in turn, threatens the source of our vulnerability, which for our purposes here, is in their relationship with the parent or party. Anger is a survival emotion. But it is not revealing what is truly being experienced.

anger is displayed, it has resulted from an experience of pain or fear. When a person only responds to the external emotional behavior, by being self-protective, that person is not engaging the root cause of the other person’s actions. They are not connecting, they are actually disengaging.

To be willing, as a mediator, to look beyond the disruptive outbursts, harsh words, threatening facial expressions, to search for the source, the mediator is expressing compassion. Mediation invites them, encourages them, to take a chance on seeing each other in the present so they can have a future not based only on past hurts.

Lessons about Compassion

Several lessons about fostering a potential for compassion are revealed in the brief exchange described earlier. Most may not be new to you. You may wonder why I am even taking your time to be here? What I hope you will discover is why we learned those

mediation tools in the first place. Those tools are not just practical for negotiation, they bring the promise of a larger outcome to parties when we use them. Even in the less poignant mediation sessions, the benefits of these tools are fostering a life-giving change in the parties, It may show up in the relationship sitting before you, but also elsewhere in their lives.

Mission Statement

Think about the messages you give parties about what they will experience in mediation with you. How will you model your practice? It starts with your own mission statement for your mediation practice. The benefits of a mission statement for mediators are

- a) gives a sense of personal purpose,
- b) provides a centering point for the mediator when she/he gets stuck, and
- c) it provides a marketing tool for a practice that expresses the integrity of what the mediator is offering.

I require my student interns to craft their mediation practice mission statement before they finish their first case. We review it again before they solo to see how real life has tested and refined it.

Temple of Hope

Where does that lead? I present it in the illustration of what I call the *Temple of Hope* (See <http://www.mediate.com/articles/ashe4.cfm>). This is an illustration of the integration of the elements of mediation. Together, your mission statement and the model of the Temple of Hope lay a foundation for compassion that can be subconsciously anticipated by the parties.

Reflective Listening

You will notice in the case I shared That the way I listened had an impact. I was reflective and focused on the vulnerable parts of their content: the size of problems mom faced, being overwhelmed, scared, dad's sense of personal worth and the challenges, being scared.

Parents' general tendencies in mediation were studied in *Israel*. The research found that mothers approach answers from the standpoint of relationships Fathers tend to approach answers from the standpoint of principles. In this case, Mom's vulnerability was revealed in the task of responding to her children, Dad's vulnerability was what it meant to be a good man, husband and father.

Unless you are so overwhelmed with your own suffering, or so callused by life experiences, compassion is opened up when vulnerability is revealed. In hearing another's suffering, we tend to find an inner movement in our outlook when we hear the revelation. How I reflected to mom helped her to reveal her fear. When dad heard mom confirm her fear, he was moved to his confession. I simply helped him reach the level of his fear so she could hear it.

Pacing

You will also notice that I paced their emotions As part of my reflection with each of them. Bob Benjamin talks about this when he talks about *Guerilla Mediation*. Pacing is a technique where you mirror the parent's expression of emotion but in a way that does not aggravate the parent. With mom, I gave more emphasis to my voice when she was energized, was quiet in my tone when she was more subdued. I did the same with dad. In this way, each was able to hear themselves as I served as their emotional mirror. Did I know what each would say? no! I trusted that the way I responded to them,

with my own acceptance and compassion, would hopefully help them find their way.

The Brain on Questions

Often stressed people are hampered in their thinking and their expressions. Those of you who have learned of the brain's activity will understand this dynamic. Those of you who have not, know it anyway! By the way, the most popular local *beer in Wales* is named Brain's. This is not what I am talking about!

When we experience an event, 2 parts of the *brain* are stimulated - The Amygdala and the Hippocampus - Each with a different history and function. The Amygdala is from the earliest part of human evolution. It is often called the primitive or "reptilian" brain. It provokes quicker responses, giving us fight of flight reactions to stressful situations. The Hippocampus is a later evolutionary development. It connects more directly to more complex memory patterns in the other parts of the brain and stimulates more cognitive activity leading to reasoning. Responses can then be more measured to the situation.

When people are stressed, these 2 parts of the brain get the message at the same time and respond in a way appropriate to their function. However, the Hippocampus takes more time, even in mille-seconds to generate a response.

In mediation, how do we help the parents to do their best given these brain dynamics? You will notice in the example, that I started the exchange with a well-phrased *question* "What do you think will happen if your children could spend more time with dad?" The kind of question you ask makes a difference.

When the parent is under stress, yes-no questions spark the Amygdala because they are perceived as oppositional, and fight or flight responses are more likely. However when you ask a question that cannot be answered reasonably by yes or no, the Hippocampus is energized to draw content for the reply, and the person is caused to reveal what is important to them based on the question. Yes-no reveals opposition. But content reveals the person. And now there is something to be heard.

This second type of question is often referred to as open-ended. They invite participation in the discussion. They invite contribution. They invite collaboration in a problem-solving situation. And they reveal the person and what matters to them.

Also note that a person's response to these questions may initially reveal surface signs of something much more significant.

When an open-ended question builds on its predecessor, the “peeling of the onion” effect can happen. As the person trusts the mediator to respect what is shared, the person can find even more important meaning to their struggle. For example, the mother in my example first responded to dad's absence as her reason for her position. With further reflective questions, where she could hear her thoughts and feelings, she got down to the source – her experience of strain and fear.

Compassion as a boundary

Once compassion is discovered by the parties, it becomes a valuable boundary in their pursuit of answers.

When a person is stressed, and self-focused, they have survival blinders on. They only consider ways that serve their own needs, be they basic or protective. The “box” of options for them is very small and increasingly restricted, the more stressed they are. But if a

person can look at another with compassion, they will tend to put limits on looking solely at self benefiting ways and ways that cost the other person, so they can more effectively deal with a situation. Ironically, when a person finds they can experience compassion for the person they viewed earlier as a threat, they give themselves access to all the reality in the situation. Boundaries give us freedom! New possibilities emerge.

When I first started mediation, I volunteered in small claims court. I remember a case where a dry cleaner had ruined a coat belonging to a very stylish woman. She brought the coat to the session. It was white wool with a brown suede collar; the brown color had bled into the white wool during the cleaning, destroying the appeal and appearance of the coat.

The dry cleaner brought a book. He showed us the industry standards and the purpose of the tags required in garments to insure proper cleaning take place. We looked at the tag in the coat and compared it to the book. It only addressed the wool content, not the collar. He had done his job but she was still left with a damaged coat. She was an intelligent person and understood what happened. But her grief was apparent.

I did not think this was all that could happen for these two good people. I tried to look beyond the situation and to find a question that could open a new direction. Remembering to be problem focused, I asked, “If the problem did not occur in the cleaning, where could it have occurred?” And we all took a moment to think about possibilities. Collectively we recognized that the manufacturer’s labeling was inadequate. Then the next questions was, “What means did we have to approach the manufacturer?” The woman noted that she had purchased the coat the local Air Force bases exchange where her husband was stationed. She saw this as an avenue of remedy. I asked the dry cleaner if he had any

ideas? He offered to go with her to the base exchange and show the manager what he showed us. And the two left mediation as allies! That would not have been possible without the discovery of compassion.

Years ago I discovered a bit of wisdom about life: the strength of one is less than one, the strength of two is more than two. Try it some time...try to move something by yourself. Then try it will a helper. It is surprising what the two can accomplish, in so many ways.

Final thought

Like for the children in the backyard, in mediation, compassion can be the “fence” around the parties’ world. It can paradoxically foster more creative approaches because there are now more degrees of freedom than when conflict separates people into isolated worlds.

If compassion is to be fostered in a mediation setting, it has to begin with the mediator. It starts with the mediator’s sense of purpose in their vocation. The value of the mission statement helps the mediator foster, sustain, and return to this focus when lost.

The way the mediator portrays the experience, the language used in the very first contact with a party, the dignity and acceptance conveyed by word and deed, the affirming of the worth of their lives as the purpose for the mediation, and a sense of hope for the future, all these things give the parties the quiet confidence to trust this critical moment in their life with this mediator.

The spirit of compassion will become integrated into the sessions as the parties sit down at the table together. Subjectively experiencing both the mediator’s listening and modeling of listening, Trusting the possible revelations and discoveries.

As the mediator asks questions, and reflects compassionately, the parties are also discovering themselves and what really matters to them. At the same time, the other person is given a chance to hear and respond to what really matters, not just the positions declared in a motion.

Knowing that anger is a protective emotion gives the mediator the freedom to look for its source, for there is where the real concern, energy, and promise will be found.

The mediator has influence that may seem mystical at times, especially in establishing the metaphors of the discussion. Seeking compassionate metaphors, the mediator helps the parties to risk opening their thoughts to more appreciative ways to recognize each other and the value of each of their roles in the situation.

And finally, when the mediator promotes compassion as a boundary for the parties' problem solving, they have opened new arenas of possibilities that avoid the polarities of conflict.

The creativity comes from a "both-and" approach to solutions instead of the previous "either-or" that needed a higher power to judge. Boundaries give us freedom. Compassion, as a boundary, gives us redeeming creativity.

I hope I have given you some food for thought about how you practice your mediation. I also hope I helped you see how what you do and say can bring a healing and life giving change to the clients you serve.

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**[2] <http://mediate.com/articles/metaphor.cfm>
C. A Conversation with Professor Leonard Riskin about
Mindfulness, Dispute Resolution, and Mindfulness Resources for
Mediators**

by Linda Lazarus

Leonard Riskin is the C.A. Leedy Professor of Law and Director of the Center for the Study of Dispute Resolution and the Initiative on Mindfulness in Law and Dispute Resolution at the University of Missouri-Columbia School of Law. Professor Riskin wrote “The Contemplative Lawyer: On the Potential Relevance of Mindfulness Meditation to Law Students, Lawyers, and their Clients,” which

appeared in the Harvard Negotiation Law Review (May 2002) as the centerpiece of a symposium entitled Mindfulness in Law and Dispute Resolution. In June, 2005, Professor Riskin and others will provide training in mindfulness in law and dispute resolution at the Harvard Negotiation Insight Initiative, Harvard Law School and the Straus Institute for Dispute Resolution, Pepperdine University School of Law.

Part I- Mindfulness and Dispute Resolution

Linda Lazarus (LL): How do you define mindfulness?

Leonard Riskin (LR): One way to define mindfulness is that it is a way of paying attention moment to moment without judgment to whatever is going on in the mind and in the body -- including thoughts, physical sensations and emotions. In other words, mindfulness means being aware without judgment. Let me add that one cultivates mindfulness, or the ability to be mindful, in meditation and then brings a mindful perspective or awareness into everyday life.

LL: What are the benefits of mindfulness?

LR: There are all kind of benefits that usually flow from the practice of meditation. People usually feel more calm and are able to develop an understanding of themselves and how their minds work. Meditation also helps people to understand other people. Also, people generally feel better both psychologically and physically from doing this practice. Meditation is a way to reduce the suffering in life by developing a different relationship to stress -- you don't necessarily get rid of stress but it doesn't have as strong an impact. Meditation also helps people deal with some kinds of health problems and other kinds of difficult situations. People feel better because they have a different relationship to the suffering that is going on -- they have a certain distance from their symptoms and

hold them in a spacious way so that they don't suffer from them as much.

LL: In your view how does a mediator help to resolve conflict?

LR: This is a very hard question. It seems to me that there are many ways in which mediators can help resolve conflict, and that we don't all do it in the same way and probably none of us do it in the same way from session to session and mediation to mediation. One way that some mediators contribute to resolving conflict is by the quality of their presence. Daniel Bowling and David Hoffman have written about this. Sometimes the mediator has a certain peacefulness that can be contagious and affect other people's consciousness and state of mind. Mindfulness can contribute to this peacefulness. Mediators can also help resolve conflict by giving people a chance to talk and to examine what is going on in themselves, and helping them to understand each other. Sometimes mediators help people resolve conflicts by telling them what to do, or telling them what courts would do, or indirectly pushing them or encouraging them to go in certain directions. Sometimes mediators help people to develop an understanding of each other's situation and of the options, and when that happens, solutions sometimes simply come into people's awareness.

LL: How can practicing mindfulness help a mediator to perform better?

LR: In a number of ways. One, it helps to avoid the problem of reacting out of habit. We can become aware of our habitual ways of conducting ourselves in a mediation so that before we act we can notice our impulse to act, and decide whether or not to carry through on the impulse. So, for example, if a client begins to raise his voice and the mediator begins to feel anxiety, the mediator's

normal reaction might be to insist that the client lower his voice. However, if you are really mindful, you can notice the anxiety come up and the impulse to quiet the client. Based on this awareness, you would be able to decide whether you want to carry through on the impulse to quiet the client or decide to release your own anxiety. In other words, if you are aware of the anxiety, sometimes that awareness without judgment is enough to cause the anxiety to dissipate and to have less power over you so that you are able to decide to let it be. Similarly, you could do the same thing with your impulse to react in a certain way.

So for a mediator I think it is really important to not react according to preestablished ideas about how a mediator ought to behave because the process is so dynamic and each mediation is so different and each moment in a mediation is so different from every other moment in the mediation. To do a good job, a mediator must be present from moment to moment.

Another problem is that it is very easy to be distracted by thoughts that have nothing to do with the mediation. For some of us, many of the distractions are thoughts about ourselves. For example, something from our personal or professional lives could come into our minds and make it hard to focus on what is going on in the room. It could be that we have an aversion to a particular party in a mediation that makes it difficult for us to pay attention. For example, I had a mediation in which I developed an aversion to one of the parties. Once I started to notice the aversion, I was able to let it go instead of getting caught up in how much I disliked the party. I was able to notice that I was having that reaction and just let it be there. I didn't let my reaction to the man control what I was feeling. The other thing that happened in that mediation was that I began to hear a voice in my head saying "You don't know what you are doing right now. These people think that you are an expert, but in fact you have no idea what to do next, and they are going to realize that soon." While these thoughts were in my mind I was not paying

attention to the parties, so that the self-centered thoughts became a self-fulfilling prophecy. I was mindful enough after a while to notice that this was going on and to bring my attention back to the parties. But it is easy to get mentally pulled away. And with mindfulness you have a better chance of catching it.

LL: You are well known for your work involving mindfulness and dispute resolution. Please tell me about that work.

LR: I have been teaching mediation, writing about it, and practicing it for quite a long time. About five years ago, I began to introduce mindfulness meditation into the training of mediators and, to some extent, into my teaching at the University of Missouri-Columbia School of Law. Since that time I have written a couple of articles that explain in detail my reasons for doing this. Essentially it is because I believe that mindfulness can help mediators and other dispute resolution professionals (including lawyers) feel better, get more satisfaction out of their work, and do a better job for their clients. I also lead a variety of training programs that involve integrating mindfulness into teaching and practicing mediation, negotiation, and other lawyering skills. These programs vary in length from 90 minutes to five days.

LL: Please tell me about the mindfulness related activities that have been going on at the University of Missouri-Columbia School of Law.

LR: Several things are going on. In 2002, I started the Initiative on Mindfulness in Law and Dispute Resolution. The Initiative really began as a web page, to serve as a resource for people who are interested in this subject.

(http://www.law.missouri.edu/csdr/mindfulness_resources.htm). It lists resources and forthcoming events both at the University of

Missouri and elsewhere. And, as part of that effort, I also have an e-mail list which I use to announce forthcoming events.

The Law School co-sponsors a number of mindfulness activities. For example, we have thirty minutes of meditation every Tuesday at noon. We have also co-sponsored mindfulness based stress-reduction programs for law students, faculty and staff, and Jon Kabat-Zinn made a presentation at the Law School in January. On the curriculum end, I teach a course for the LL.M. in Dispute Resolution Program called “Understanding Conflict.” In that course, we use mindfulness meditation to develop self-awareness and to help focus on the relationship between internal and external conflict. Recently the faculty approved a new course called “Emotional Intelligence in Law” which will use mindfulness meditation to help develop emotional intelligence.

LL: Are you offering any mindfulness training programs that are open to the general public in the near future?

LR: Yes, I will be co-teaching three mindfulness-based training programs this summer. On June 16-18, there will be a program called “Mindfulness in Law and Dispute Resolution” at Pepperdine University School of Law which I am co-teaching with Rachel Wohl, the Director of the Maryland Mediation and Conflict Resolution Office. On June 20-24, I will be co-teaching a program at Harvard Law School with Melissa Blacker of the University of Massachusetts Medical School. On July 13-15, there will be a program on negotiation that uses mindfulness techniques at the Northwestern University School of Continuing Studies. I am co-teaching that program with Daniel Shapiro, a psychologist at Harvard Law School who has just finished a book with Roger Fisher about how to deal with emotions during negotiations.

LL: Are you aware of any other mindfulness activities that may be of interest to mediators?

LR: There are many mindfulness activities throughout the country. For example, the Center for Contemplative Mind in Society has sponsored several retreats for lawyers at the Spirit Rock Meditation Center. There are also contemplative law and meditation groups in different parts of the country. Many of these activities are listed on my website.

LL: Would you please recommend some mindfulness resources.

LR: Here is my list of recommendations, which is also on my website:

Books and Articles:

Enhancing Emotional Intelligence and Managing Stress in Dispute Resolution and Legal Practice, (Alternatives, Sept. 2002, pp. 156-58).

Shannon Burke, Peace of Mind,<http://www.columbiamissourian.com/news/story.php?ID=12088>(Columbia Missourian, Feb. 13, 2005).

Mark Epstein, Thoughts without a Thinker: Psychotherapy from a Buddhist Perspective (Basic Books 1995).

Mark Epstein, Going to Pieces without Falling Apart: A Buddhist Perspective on Wholeness (Broadway 1998).

Mark Epstein, Going on Being: Buddhism and the Way of Change: A Positive Psychology for the West (2001).

Daniel Goleman, Emotional Intelligence: Why it Can Matter More than IQ (Bantam 1995).

Daniel Goleman, Working with Emotional Intelligence (Bantam 1998).

Joseph Goldstein, Insight Meditation: The Practice of Freedom (Shambhala 1994).

Henepola Gunaratana, Mindfulness in Plain English (Wisdom 1992). (Highly recommended introductory reading.)

Stephen S. Hall, “Is Buddhism Good for Your Health?” (New York Times, Sept. 14, 2003).

Phil Jackson & Hugh Delehanty, Sacred Hoops: Spiritual Lessons of a Hardwood Warrior (Hyperion 1995).

Phil Jackson & Charley Rosen, More than a Game (Seven Stories Press 2001).

Jon Kabat-Zinn, Full Catastrophe Living: Using the Wisdom of Your Mind to Face Stress, Pain & Illness (Delta 1990).

Jon Kabat-Zinn, Wherever You Go, There You Are: Mindfulness in Everyday Life (Hyperion 1994). (Highly recommended as introduction to mindfulness.)

Jon Kabat-Zinn, Coming to Our Senses: Healing Ourselves and the World Through Mindfulness (Hyperion 2005).

Steven Keeva, Transforming Practices: Bringing Joy and Satisfaction to the Legal Life (Transaction Books, 1999).

Steven Keeva, A Mindful Law Practice (ABA Journal, Mar. 2004, p. 78).

Elaine McArdle, From Ballistic to Holistic (The Boston Globe, Jan. 11, 2004).

Van M. Pounds, Promoting Truthfulness in Negotiations: A Mindful Approach, 40 Willamette L. Rev. 181 (2004).

Leonard L. Riskin, The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students and Lawyers and their Clients, 7 Harvard Negotiation Law Review 1-66 (June 2002) (the centerpiece of a Symposium on Mindfulness in Law and ADR). A web cast of the live symposium held at Harvard Law School in March 2002 is available at http://www.pon.harvard.edu/news/2002/riskin_mindfulness.php3.

Leonard L. Riskin, Syllabus for Understanding Conflict (Fall 2002), a required course in the LL.M. in dispute resolution program at the University of Missouri-Columbia.

Leonard L. Riskin, Mindfulness: Foundational Training for Dispute Resolution, 54 Journal of Legal Education 79-91 (2004).

Zindel V. Segal, J. Mark G. Williams & John D. Teasdale, Mindfulness-Based Cognitive Therapy for Depression: A New Approach to Preventing Relapse (Guilford 2002).

Breath Sweeps Mind: A First Guide to Meditation Practice (Jean Smith, ed., Tricycle 1999).

Eckhart Tolle, The Power of Now (New World Library 1999).

Audio and Videotapes

The Center for Mindfulness in Medicine, Health Care and Society <http://www.umassmed.edu/cfm/> offers a variety of meditation and yoga audiotapes.

The Dharma Seed Tape Library, <http://www.dharmaseed.org/> offers a variety of audiotapes and videotapes with a Buddhist orientation, including some intended for beginners.

Organizations and Websites

The Cambridge Insight Meditation Center, <http://www.cimc.info/>, offers a wide variety of insight meditation-related programs. 331 Broadway, Cambridge, MA 02139. Tel: 617/441-9038.

The Center for Contemplative Mind in Society, 199 Main St., 3rd Floor, Northampton, MA 01060. The Center's law program has sponsored a series of insight meditation retreats for lawyers and law students. For information, contact Mirabai Bush, executive director at 413/268-9275. <http://www.contemplativemind.org/programs/law/>

The Center for Mindfulness in Medicine, Health Care, and Society at the University of Massachusetts Medical School provides training in mindfulness for a wide range of organizations, operates a stress and pain reduction clinic, and conducts research on the effects of mindfulness practices. Saki Santorelli, Director, Center for Mindfulness in Medicine, Health Care, and Society, Department of Medicine, University of Massachusetts Medical School, 55 Lake Avenue North, Worcester, MA 01655; Tel: 508/856-5493; Fax: 508/856-1977. <http://www.umassmed.edu/cfm/>

D.C. Contemplative Law Group: A meditation and discussion group for lawyers who live in the Washington, D.C. area. The contact person is Linda Lazarus, lindalazarus@starpower.net.

The Enlightened Sentencing Project, a program in St. Louis, MO in which training in Transcendental Meditation (a different form of meditation than mindfulness) is a condition of parole. <http://www.enlightenedsentencing.org/>

Forest Way Insight Meditation Center, P.O. Box 491, Ruckersville, VA 22968; Tel: 804/990-9300; Fax: 804/990-9301; E-mail: forestway@cstone.net <http://www.forestway.org/>

Insight Meditation Society, 1230 Pleasant Street, Barre, MA 01005; Tel: 978/355-4378. Offers insight meditation retreats, publications, and other resources.. <http://www.dharma.org/>

Meditation and Mediation: A meditation and discussion group consisting of mediators meets once a month in the San Francisco Bay Area. The contact person is Barbara Bryant, bsbryant@pacbell.net.

Mid-America Dharma Group, 717 Hilltop Drive, Columbia, MO 65201; Tel 573/817-9942; E-mail: ginny@midamericadharmagroup.org. This site has information about mindfulness meditation retreats and sitting groups in the U.S. and Canada. <http://www.geocities.com/~madg/>

Mindfulness Practice Center, University of Missouri-Columbia Student Health Services. For more information or to be added to the e-mail list contact: Lynn Rossy at RossyL@health.missouri.edu. <http://www.studenthealth.missouri.edu/MPC/mpc.htm>

Mary Mocine, marymo@worldnet.att.net, regularly offers programs for lawyers in Northern California.

Spirit Rock Meditation Center, 5000 Sir Francis Drake Blvd, P.O. Box 169 Woodacre, CA 94973; Tel: 415/488-0164; Fax: 415/488-017. <http://www.spiritrock.org/>

Transforming Practices. Website maintained by Steven Keeva, author of the book *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (Contemporary Books, 1999). <http://www.transformingpractices.com/>

Vipassana Meditation Centers operated by S.N. Goenka and his assistants around the world.. <http://www.dhamma.org/>