

## **Mediator Role Models**

*by Martin I. Reisig*

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Original Printing: LACHES, November 2003

The most important mediator skills and attributes are learned from observing those around us who innately are peacemakers. We all have been blessed by those special people who strive to bring us together and who see the positives in others instead of dwelling on faults. I find myself thinking about my parents and neighbors – people who tried to “make things better.”

My family came to Oak Park, Michigan in the mid-50s from Brooklyn, where Dad had worked with one brother in an artist-driven advertising business that was being replaced by the increasing commercial use of the camera. Dad joined his other brothers who had started Richard Cancellation Shoes in Detroit. His main contribution was not knowledge of shoe styles or business techniques, but the importance of caring about each other, the salesmen and the customers. I worked with Dad and my uncles in the shoe store and learned that this was first and foremost a service business. Success depended on treating customers and fellow workers respectfully, apologizing when a mistake was made, and caring about long-term relationships. I did not know it then, but these were early lessons in conflict resolution and mediation. Often, nothing is more important than an apology in clearing the way toward settling a dispute.

Family businesses have family disagreements. What I saw in Dad was the belief that family harmony was much more important than someone being right or wrong. Appreciation of the strengths of others was more important and effective than dwelling on all our shortcomings. As we mature, the significance of harmony becomes clear. Mediation, like running a business, must emphasize a long-term perspective anchored in mutual respect and understanding. In mediation, fixing problems moves us forward, while fixing blame does not.

The shoe store’s ethnically and racially diverse sales staff all knew that Dad had the time to listen to them and appreciate their concerns. I didn’t realize then that I was watching a man who created safe spaces for discussion and whose decency brought out the decency in others.

Similarly, in a case that I co-mediated at the Oakland Mediation Center, it was clear to me that the warring parties became embarrassed by their own behavior in front of my kind co-mediator and slowly elevated their discussion in order to resolve the issues.

Sometime after arriving in Oak Park, flooded streets and basements lessened our joy of home ownership. My dad took a small rubber raft to paddle the street, visit our neighbors and “enjoy” our Venice. He helped to diffuse the street’s despair with humor and gentle greetings. Above all else he cared about the happiness of his family, friends and neighbors. He provided early lessons in humor, optimism and making the best of the situation. During mediation, while not literally riding a rubber raft in troubled waters, the mediator strives to improve the atmosphere or to find the calm below the waves.

I also learned mediation skills from my mother. Mom was the perfect hostess. My always-hungry friends knew that when they dropped by, food and warmth awaited them. Our home was a comfortable place for so many. Friends felt listened to and appreciated. I have thought of mediating as trying to be a good host who attempts to make people feel welcome, heard and respected. I’m sure that if I could put Mom’s food on the table there would be a 100-percent settlement rate. Just as different foods are served to please different guests, the mediation process can be specifically tailored to meet the needs of the particular parties.

I don’t recall my folks offering specific advice or never-before-imagined answers. What they counseled was patience, caring, perspective and trying to understand one another’s viewpoints. If asked, they would share their thoughts. Like them, good mediators are seen as being authentic and genuine. In many ways, it is the mediator’s role to be a friend to both parties. As a friend, the mediator provides a comfortable setting, fosters an atmosphere in which the parties are fully heard and can fully clarify and explore their respective and joint interests, and promotes thorough exploration of resolution options.

I find the debate within the mediation community between facilitative and evaluative styles to be a little exaggerated. Sometimes friendly advice is appreciated. Not forced and not absolute advice – just the thoughts of an independent third party trying to be helpful when asked. The lawyers and parties will let you know when assistance would be appreciated. In particularly adverse situations, when a trusted neutral floats an idea there is less likely to be a reflexive negative reaction. The key for a successful mediator is respecting and trusting the parties and their lawyers, and not posturing as the sole source of wisdom.

At other times, mediations are most successful when I focus only on preserving the safe space and staying out of the way, including endorsing the parties working it out without my “help.” The goal is to serve the needs of the parties. Good mediators trust their intuitions and will, as my favorite rafting T-shirt says, “Go With the Flow.” In one recent case, while the communication between the parties was going well, I suggested that the lawyers and I leave the room and all participants agreed. The parties settled and thanked me for my “wisdom.”

To be a good mediator one should learn the important facilitative mediation techniques of listening, re-framing, focusing on interests rather than positions, encouraging options and respecting the importance of emotions and feelings. Mediation, however, is more than a list of important techniques. There is no absolute “right way” to mediate or to participate in mediation. Mediators will bring different attributes to the table. Once de-clawed, those mediators who are also trained as lawyers have much to contribute. Our abilities as lawyers to define issues, apply facts and incorporate prior cases into the reality check are useful, but are not the only tools used in furthering the settlement process.

As I look around I realize there have been and continue to be so many role models whose presence instills peacemaking. I stayed on a neighborhood board long after my interest had faded because I enjoyed watching how our board president (a retired engineer) listened and brought harmony to meetings. Although he was always the best prepared on the issues, consensus building was of greater importance to him than our adopting his point of view. As somebody who often has strong viewpoints, I continue to have much to learn from his example. Another “teacher,” my current next-door neighbor, always has time to listen to me over the fence. Like the neighbor on Tim Allen’s “Home Improvement” show, his gentle kindness and optimism are always available. The mediator by definition is the optimist in the room.

As a result of mediation, one quote has become a favorite of mine: “When we listen, people talk.” Mediators can restore listening and mutual understanding to the discussion. The calming presence of a third party can seemingly magically help resolve disputes, while at other times a third party’s perspective and thoughts can be of great assistance. Create that safe space for listening and understanding, and amazing things happen time and time again.

In mediation, deciding what happened in the past is not as important as agreeing on what should happen next. The mediation atmosphere encourages understanding and resolution – not blaming. While I have been a trial lawyer for most of my 33 years of practice, trials are very odd

and abnormal. Trials are a great safety valve, but in many ways are the least satisfying and most stressful way of resolving disputes for both the client and the lawyer. Trials are conducted within a narrow, learned formula, while mediation allows for much greater latitude and allows us to call upon a much broader slice of our life experience.

Remember your role models for serving others: listening, caring, consensus building, respect, kindness and creating safe places. These are not new ideas. I praise mediation training because it reinforced what I learned at home, at the shoe store and in the neighborhood. I thank my role models for providing the most important mediation lessons, and view mediation as a chance to follow in their footsteps in trying to “make things better.”



***Martin I. Reisig** is a full-time mediator. He has served as Chair of the OCBA Alternative Dispute Resolution Committee and is currently the President of the Oakland Mediation Center. He served on the Michigan Supreme Court Dispute Resolution Task Force and is a previous recipient of the OCBA Distinguished Service Award. Marty has been an adjunct professor of trial practice, evidence and legal ethics.*