



By Margaret L. Shaw and Stephen B. Goldberg

All of us who have been active mediators for any significant time are asked time and again, “How can I get into the field? Is mediation as enjoyable as it appears to be? What will it take for me to become a successful mediator?” We asked these questions of 31 mediators who began mediating in the 1970s and 1980s and who have remained active in the field to this day. These mediators have experience in the areas in which mediation has been most widely used: business and commercial, construction, product liability, employment, divorce, labor management, neighborhood, environmental, community, and public policy matters.

Despite the variety of their areas of practice, the views of these mediators were remarkably consistent. They found mediation to be immensely satisfying work. They noted the value of patience, persistence, and legal

experience in becoming successful in the mediation marketplace. They also commented on the importance of mediation training, mentoring, practice, and marketing. Finally, they commented on the challenges—and advantages—of turning to mediation as a second career.

Mediator Sample and Study Questions

The mediators in our study entered the mediation field from diverse backgrounds. Slightly more than half (16 out of 31) were lawyers. The remainder had been engaged in a variety of occupations at the time they first became involved in mediation. Three were graduate students, two were professors in fields other than law, and nine (including some of the lawyers) had labor backgrounds. Others included a peace/civil rights activist, an ombudsman, an Outward Bound leader, a family therapist, a youth gang worker, and a conscientious objector performing alternate service at a student housing project. We asked the mediators what had attracted them to the then-nascent field of mediation, why they had remained in the field, what changes they had observed, whether they viewed those changes as positive or negative, and where they anticipated the field would be 10 to 15 years from now. We also asked them what advice they would give to people interested in becoming mediators today. What follows is taken from the mediators’ responses to these questions, particularly the final question.¹



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Why You Might Want to Be a Mediator: The Rewards of Mediation

The mediators' responses to our question about why they had remained in mediation for so many years should encourage anyone thinking about entering mediation today. One point that was mentioned by many mediators was the wide variety of people and situations in which they become involved.

It's so dynamic and fresh, and challenging in that as a mediator I get to go from one subject-matter area to another constantly. And I love being in a job that every day I'm learning something new. (Eric Green)

I didn't feel like I was doing the same old stuff. We got involved in some really interesting projects in different parts of the world. . . . I began to explore new ways of dealing with family issues . . . adoption, and child protection. So it was always changing . . . challenging, and there was always new stuff. (Bernie Mayer)

Nearly all the mediators commented on the pleasure they derive from assisting participants in mediation to resolve their dispute, often a dispute that had become life-consuming. Some examples:

I was really turned on by the ability to get people who had been fighting to come up with solutions. And by my own ability to figure out what was important to people and help them get at least some of it. It really was magical. Still is. (Linda Singer)

The sense of satisfaction that comes from helping people work through problems to a resolution that they are able to accept, and that enables them to get on with their lives. So it is both the fascination of looking into their lives, and the sense that I had some impact on those lives that I find satisfying. (Craig McEwen)

Equally frequent were comments expressing the excitement felt by the mediator when, in the course of a mediation, the likely resolution of a hard-fought conflict becomes apparent. Peter Adler made this point vividly:

When something happens and people gain clarity into something that was one-dimensional for them, and then all of a sudden they can see that there's more dimensions than one, people start to get unstuck. I just love that. Yeah, and it's not about how much I made, it's not about the case, it's just something special . . . that's the million-dollar moment for me. It's the golden moment for me when people are ready to move on from something they were tripping over in their lives.

Many mediators draw pleasure from the sense that their work is socially valuable. According to Marcia Greenbaum:

I think that mediation is an opportunity to provide some kind of justice in the workplace, a compassionate ear to employees, supervisors, and managers who have problems that a mediator might be able to help them resolve. So it is a way to contribute to the social good, and bring some peace to a workplace that might otherwise be less friendly or more hostile.

Howard Bellman told us that he views "disputing and making it inconvenient for other people" as both an essential element of democracy and a threat to the quality of life. Mediation has a role to play in dealing with that tension:

I believe that to the extent that we can invent methods for managing disputing that don't disallow conflicting points of view, society and the body politic are the beneficiaries. . . . I think that even if you're talking about people mediating divorces and the variety of other disputes that don't have a conspicuous public policy component, it still has some subtle effect.

Challenges of Becoming Established As a Mediator

As satisfying as mediation is, if there is anything on which all experienced mediators agree, it is the difficulty of breaking into mediation and earning a living as a mediator. Although this may change with the evolution of the field, at present becoming a successful mediator will not happen quickly.

I say it will take you three to five years. . . . Be very, very patient. (Margaret Shaw)²

To the chronologically younger person, and therefore presumptively less-experienced person, I tell them that they should erase from their minds the notion that they will be mediating cases for high hourly fees any time in the next 10 years. (Josh Stulberg)

What's the reason for this? As Professors Goldberg and Sander have pointed out,³ mediation is usually provided by neutrals practicing alone or in small groups with no apprenticeship opportunities that allow younger neutrals to learn the trade and develop a client base. Additionally, mediation, even more than lawyering, tends to be viewed as a hands-on skill, so that work is not easily transferred from a senior mediator to a junior mediator, as it might be from a senior law firm partner to a junior partner.

Although developing a practice may take time and require patience, there are, even at this stage of the field's development, jobs to be found that can lead to careers in the field of mediation. As Len Riskin pointed out:

There are here and there jobs for mediators in the world—there are government agencies, there are mediation programs—usually non-profit programs. . . . But the problem is there aren't very many of them in the whole country, and it's a problem of finding out and being in the right place to be able to find out something like that. But you can't count on it⁴. . . . But if it's really important to you, if it's your dream, follow your dream to the extent that you can manage it, and don't let the conventional wisdom about how hard it is discourage you, because I've had students who came right out of law school or out of the LL.M. [Program in Dispute Resolution at the University of Missouri] . . . and got great jobs in mediation.

Riskin's last point—if becoming a mediator is your dream, follow that dream if you possibly can—was echoed by Gary Friedman:

If you want to develop a mediation practice, you will, and you'll be successful if it touches something that's deep enough inside you that you stay with it, and that you learn what you need to learn to be able to do it, and not be daunted by the fact that there seem to be so many mediators out there because I think that quality mediators and quality mediation will bring much expansion of the field.

A different approach to getting started—one that involves the use of mediation skills but bypasses the significant difficulties of earning a living as a beginning mediator—was suggested by several respondents. According to Wally Warfield:

I tell students and other people coming into the field to think broadly about the field from the standpoint that conflicts are everywhere, so don't worry about labeling yourself as being "the mediator." Take a job and see where the conflicts are, and see how you can use the skills and techniques, and don't worry about the label.

Chris Moore pointed out the difficulties in some of the traditional routes of entry into the mediation practice—hanging out your shingle, adding mediation to an existing legal practice, or joining a mediation organization. He suggested another option:

Go and work in an organization, for example, someone who does work in HR. You're not going to become a mediator, but you're taking mediation principles and skills and applying them to your work. I'm on the Board of Directors for the Conflict Resolution Institute for the University of Denver, and that's probably the way that more [students] get placed than any other. They're placed in a job where they can apply their conflict resolution skills, but they're not necessarily labeled as the mediator.

Peter Adler and Larry Susskind gave us other examples of jobs in which people use mediation skills:

The U.S. Forest Service has set up a whole series of collaboration initiatives that utilize a so-called mediator to do the same things we do, but their rules are somewhat different and their roles are somewhat different, and they have very little interaction with other mediators . . . They don't know anything about our journals, our language, our jargon, they don't know what a BATNA is, and they may not understand the intellectual distinction between interests and positions, but they get it. They get this stuff, and they do it. They do it all the time. (Peter Adler)

Larry Susskind told us that MIT and the United States Geological Survey created the MIT-USGS Science Impact Collaborative (MUSIC), which seeks to harmonize science, policy, and politics. MIT is teaching people with a science degree about the processes by which political decision making and scientific analysis can be done in a collaborative way. MIT is also working with the Department of the Interior to create a new job classification called *science impact coordinator*, designed for graduates of the MUSIC program. According to Larry:

We're arguing that the agency needs to have a kind of extension which includes people who can work in the

interface between the scientific part of what the agency's doing and the advocates in the community and the policymakers who will ultimately adjudicate what happens. And these are agency positions for people who can be credible as neutrals.

What Background Do You Need to Succeed As a Mediator?

Some mediators who possess the requisite attributes and skills to successfully assist in the resolution of disputes are not selected to mediate because the selectors doubt their qualifications.⁵ And, because a good percentage of mediation today deals with disputes that, if not settled, will be resolved by a court or some other adjudicative process, such as arbitration or an administrative tribunal, the people who select the mediators are typically lawyers. Not surprisingly, the ingredient that lawyers tend to believe is necessary to be a successful mediator is legal knowledge and experience. As a result, it is axiomatic today that a law degree, if not experience in the practice of law, is almost a *sine qua non* for success in the mediation marketplace—at least in those disputes that arise in the shadow of the law.

The first thing I tell [aspiring mediators] is that they maybe ought to go to law school . . . not because I think mediation is lawyering, but because the market appreciates the credentials. Whether I like it or not, that's the way the market has developed. (Howard Bellman)

You need some litigation experience in order to have some gravitas in a mediation, and to be able to know how lawsuits operate if you're settling lawsuits. (Carrie Menkel-Meadow)

It's easy to hang out your shingle and say "I'm a mediator," but the question is whether anybody is going to hire you. I think that is primarily a function of being known as a responsible, intelligent person of high integrity. So what I say to law students is to . . . practice law in such a fashion that you'll be recognized as a person of intelligence and integrity, so that when you're ready to be a mediator, someone will say, "I'd be happy to have her as a mediator because I have a lot of respect for her." (Steve Goldberg)

Even experience as a practicing lawyer may not be sufficient to attract mediation clients. According to Homer LaRue:

If you're going to be acceptable to the parties, you're going to have to be able to show some subject-matter expertise. The choosers of the mediators are lawyers, and the disputes are usually legally based, and lawyers tend to think that unless you have subject-matter expertise in their dispute, you're not going to be able to help them—even though the problem may be more process issues than it is substantive issues.

Not all mediators are enthusiastic about the demand for legal experience as a precondition to becoming a successful mediator. Josh Stulberg, who is a law school professor, was quite open about this, and suggested a different route for law students who do not want to practice law prior to working as a mediator:

I identify for them those organizations that have dispute resolution programs—community-based mediation programs, school systems, or universities with mediation programs—and I encourage them to get involved. If they can't get a staff position, I encourage them to explore whether there are volunteer opportunities with those programs. . . . Another terrific avenue for them to pursue are those family courts that hire mediators full time as staff people. A law student who has done concentrated study in mediation and negotiation and arbitration is qualified for all of those types of positions, and the experience is invaluable in enabling them to enter and advance in the profession.

Gary Friedman, also a law professor, confesses to similar feelings, but is resigned to the necessity of legal experience as a precondition to mediation success, though he puts it more in terms of being a skilled mediator rather than as a marketing device:

I . . . dearly wish that there would be ways in which people could learn to be mediators without having to go to law school. Certainly all the things you learn in law school aren't necessary to mediate, but there is a feel of the litigation situation that comes from experience that I'm not sure we know how to teach. So I do think it's really quite valuable for people to go to law school. To be liberated from the constraints of law you kind of have to know the law.

When disputes are not focused on legal issues, having a law degree and law practice experience is of less significance in being selected as a mediator. Nonetheless, substantive knowledge of the field in which one is mediating is important, and knowledge of conflict resolution theory and skills, without more, is insufficient.

I have a lot of students who . . . ask me, "Should I do my masters in conflict resolution?" and I say "If you're interested in an academic career, maybe you do want to do something like that. But if you want to go out into the world of action and practice and day-to-day stuff, what I suggest you do is think hard about the application area you're interested in. If you want to work with families, do counseling and social work. If you want to work in the legal setting, get your law degree for that . . . or you want to work in the world of business or whatever it is." . . . Then, you can take [conflict resolution] courses with a binocular view, so you can say "I'm really interested in that and how do I apply it [to the area I'm interested in]." (Peter Adler)

The people who come to me are motivated by the fact that being in the middle and being neutral produces results that make this a noble cause. So I say to them, well, if you're going to try to do this, you'd be best off learning something about something first. If you want to help do these kinds of disputes in hospitals, then go get a degree in public health or medicine, or something where you know something, and you can be taken seriously as a neutral in that context. . . . [W]hen you're working in that substantive arena, you can then learn something more about these process skills by volunteering or by . . . taking clinical courses. (Larry Susskind)

Undoubtedly, the background from which to break into the mediation marketplace the fastest is to have been a respected judge.

The break-in time for this is quite long . . . unless you are a former judge who has had hundreds and hundreds of people appear before you, and you were one of those judges that people would say "whether I won the case or lost the case I would love to have him or her." (Bill Hartgering)

It can take a nonjudge years to build up a steady practice, but a retired judge, if he or she is any good at this, could have a full practice in six months. (Linda Singer)⁶

What Else Is Key?

There was general agreement among the mediators interviewed that the keys to becoming skilled—and employed—as a mediator include training, mentoring, practice, keeping up with developments in the field, and marketing. Some mediators emphasized some of these elements more than others, but they are all important.

You need to get training and you need to apprentice yourself to good people. I think it's a combination of the two. Then, depending on what area within mediation you want to pursue, find organizations that will permit you to monitor, observe, and apprentice. (Susan Carpenter)

Take some training, keep up with the field, and get as much experience as you can, maybe working together with a good mediator in your area who would agree to let you sit in . . . sort of a blend of keeping up with the field intellectually and trying to get . . . somebody [who] would sit down with you after a mediation, and discuss what happened and why it happened. (Frank Sander)

The importance of observing experienced mediators at work and getting hands-on experience as a mediator was strongly emphasized by many of the mediators:

Any mediation experience you can get, even if it is of a voluntary nature, would be well worthwhile. The key is for you to get the mileage. And that means attending mediations, doing pro bono. . . . Get the mileage so you understand your mediation abilities, you get the experience and if you do that, at some point people will begin to recognize that you have particular skills in this area and will ask you to do it. (Francis McGovern)

[B]e a volunteer mediator in a small claims court or community mediation setting, because . . . you need to figure out how you fit in the coat of a mediator. Even if your goal is to mediate different topics, practice is important. We each have different strengths and we mediate in different ways and so, you learn by doing. (Gail Bingham)

John Paul Lederach, whose practice is primarily international, had similar advice for aspiring mediators who are interested in international practice:

A lot of people come to me and when they gravitate toward me they're interested in the international, and so they want to know how to do that. What I tell them

is to look very carefully in your local community, find mediation centers, find people who are doing it, get your training, spend as much time as you possibly can actually doing it. It doesn't matter what the case is, or what the level is, or whether it's two people or ten, because it will always stand you well to learn from your own experience . . . In other words, you don't get to be international by getting on a plane and flying somewhere.

Finally, if you want to make a living as a mediator, it's not enough to be competent: you also need to be known. In our experience, writing articles has been valuable, as have joining committees and taking part in activities where you have opportunities to meet the lawyers who will be potential clients. Len Riskin suggests other ways to build visibility in the community:

Once you've actually decided to try to become a mediator, offer your services, and push it as much as possible. Try to get on television. If you can give a speech at a library or at church, or write an article for your local newspaper, that might get you a little work, and be willing to work for not very much if that will be helpful in getting cases, or volunteer your services, and just be out there and push it.

Mediation As a Second Career

Many of the mediators with whom we spoke, particularly those who teach mediation or provide mediation training, reported that they are regularly approached for advice on breaking into mediation by people for whom mediation would be a second career. Many such people have been practicing law for years, have become disenchanted or burned out by adversary battling, and are interested in becoming a peacemaker rather than a warrior. Others have experience mediating in their jobs, either as a participant or as an informal mediator, such as a manager who regularly assists subordinates in resolving conflicts. Finally, mediation seems attractive to some as a second career because it appears to be a sedentary profession, well suited to a retiree from another job.

As we pointed out earlier, the transition into mediation as a second career, at least for legal disputes, is easiest for former judges. As for those without prior judicial experience, the mediators said:

For the people who have been practicing law for a number of years who would like to switch focus and become a full-time mediator . . . it might even be easier, assuming that they are not known as bombers. . . . [I]f they're not known as bombers, but are rather known as people who deal fairly with others, I would start off by saying get some experience mediating. If they're fancy enough, getting added to a court's mediation roster probably isn't all that difficult. Courts love fancy lawyers. So get some training, get on a roster, get some experience, and then tell your friends. If you've been around for 20 years or more, you probably have lots of people you've dealt with in the legal community. If you've carried yourself well through those 20 years of practice, probably lots of those people will trust you, so you might have an easier time building a practice. (Michael Lewis)

Some of the mediators mixed their advice with cautionary comments:

To burned-out lawyers, I say this is not for burned-out people. . . . [B]eing a mediator is really hard work, and I don't care how old or great a lawyer you are, you need training, and you need to show that you have something to bring to the table. So just the fact that you are tired of litigating doesn't mean you're going to be good at this. You can't just march right into it is what I'm saying: preparation, experience and training, you need all of it. (Carrie Menkel-Meadow)

[People who] are retiring from law firms and the bench . . . I talk to them about whether they really enjoy it, whether it's realistic for them to think people will use them. . . . There's a real question about whether you're going to be able to build and sustain a practice. The sad thing is that it can take a nonjudge years to build up a steady practice. (Linda Singer)

Combining the Roles of Mediator and Advocate

An interesting question for the experienced lawyer who would like to work as a mediator is whether it is possible to combine the two roles, not in the same case, but at the same time—handling some matters as an advocate, others as a mediator. The roles are quite different—the mediator focusing on assisting the parties to reach agreement, the attorney focusing on whether the agreement is favorable for her client—leading Professor Frank Sander to express some doubt about the lawyer's ability to play both roles at the same time.

Assuming he or she has had extensive experience in mediation as a lawyer or party representative, I would say that you want to think through how your role is different as a mediator from being an adviser to one of the parties, and certainly it may be difficult to assume both roles at the same time, even if not in the same case.

Michael Lewis, however, told us that it is becoming increasingly possible for lawyers to do both mediation and advocacy work.

There appears to be a growing sense in the legal community that they could use someone who's known as a plaintiff's employment lawyer, as a mediator, even while that person has a strong practice, a vigorous practice. That appears to be something that the market is willing to entertain. So that there's at least the possibility that a person that's interested in mediation can have a law practice representing folks, and a practice as a neutral at the same time.

Thus, with due regard for the caution expressed by Professor Sander concerning the difference between the roles of mediator and advocate, combining the two roles, at least for a time, may offer another avenue for the experienced lawyer to make the transition into the mediation role.

Finding Generosity

Those we interviewed who have been in the field for decades report how rewarding—though often

difficult—they find their chosen work. This undoubtedly accounts, at least in part, for the inquiries all of us receive on almost a daily basis about becoming a mediator.

The voices of the pioneers will, we hope, provide both inspiration and guidance to the next generation of mediators. While the field of mediation, as any relatively new field, is developing, changing, becoming more crowded, specialized, and sometimes more formalized, it is a field that rewards creativity and persistence. Another particularly appealing aspect of mediation is the willingness—exemplified by the quotes in this article—of those who have gone before to assist those who follow. This is a field in which generosity abounds. Although developing a mediation practice is hard work, you can count on your fellow travelers to help you enjoy the ride. ♦

Endnotes

1. Some of the quotations in this article have previously appeared in Stephen Goldberg and Margaret Shaw, *The Past, Present, and Future of Mediation as Seen Through the Eyes of Some of Its Founders*, 26 *NEG. J.* 241–57 (2010), which is based on the mediators' responses to all of our questions except those dealing with advice to aspiring mediators, which are not included in that article.

2. Although it may seem curious to find direct quotes from the authors, we asked each other the same questions we asked all other mediators, so decided to present our responses in the same form.

3. STEPHEN GOLDBERG, FRANK SANDER, NANCY ROGERS, AND SARAH RUDOLPH COLE, *DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES* 597 (5th ed., 2007).

4. There are many local organizations and mediator membership organizations that offer tips on beginning a practice. For example, in New York City the Dispute Resolution Consortium of the City University of New York has an excellent website that lists job and networking opportunities, among other useful information (Google CUNY Dispute Resolution Consortium). Local and state bar associations, as well as the American Bar Association Section on Dispute Resolution, are, similarly, excellent resources for beginning mediators.

5. "Success" as a mediator can be defined in quite different—albeit related—ways. One definition of success consists of being able to assist disputing parties to resolve their disputes. Alternatively, success as a mediator can be defined as being able to earn a decent living through the provision of mediation services. Inasmuch as most aspiring mediators are primarily concerned with the latter (their prospects for earning a living as a mediator), being able to do so is how we define success for purposes of this article.

6. Although a former judge may have an easier time getting started as a mediator, that is no guarantee of long-term success. See Stephen B. Goldberg, Margaret L. Shaw & Jeanne M. Brett, *What Difference Does a Robe Make: Comparing Mediators With and Without Judicial Experience*, 25 *NEG. J.* 277 (2009).



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