

# Preface

Gary Friedman's *Inside Out: Working Through Conflict* is a treasure. It presents SCPI (Self-Reflection for Conflict Professionals Intensive), the latest and most refined product of the understanding-based tradition in conflict management, especially mediation, which has been evolving since about 1979 and has influenced lawyers, mediators, and other conflict professionals in many parts of the world. That tradition has included extensive work on humanizing law school education through a program created by Jack Himmelstein and Gary<sup>1</sup>; numerous workshops involving the Understanding-Based approach to conflict for lawyers, mediators, and other professionals who deal with conflict; and a variety of other programs, including those designed for collaborative professionals.

SCPI, the focus of this book, was developed in recent years—by Gary and his long-time collaborator, Jack (both of whom have backgrounds in law and mediation), and Norman Fischer (a Zen Buddhist priest, teacher, and poet who recently joined their programs). Its mission is to help conflict professionals learn to work with conflict while exploring their own and their clients' internal processes at deeper levels than most conflict professionals reach.

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1. This was known as the Project for the Study and Application of Humanistic Education in Law. Between 1977 and 1983 it offered numerous workshops for law professors (in which I took part as both a participant and an intern), many of whom subsequently made major contributions to legal education. The Project was based at Columbia University School of Law and funded by the National Institute of Mental Health. For a sense of the goals and outcomes of this program, see Jack Himmelstein, *Reassessing Law Schooling: An Inquiry into the Application of Humanistic Educational Psychology to the Teaching of Law*, 53 N.Y.U. L. REV. 514 (1978); ELIZABETH DVORKIN, HOWARD LESNICK & JACK HIMMELSTEIN, *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (1981).

Since about 1980, I have been working with mediation and other methods of conflict resolution—studying, writing, teaching, training, and practicing. And nearly everything I have done in this realm draws upon or parallels the work of Gary, Jack, and Norman.

I recall first hearing the word *mediation* in about 1981 while I was participating in a workshop on humanizing law school education led by Jack and Gary under a grant from the National Institute of Mental Health. During a break, I walked past Gary as he was talking to a cluster of other participants and overheard him describing a new way to serve clients. I stopped to listen.

“What’s mediation?” I asked. “Is it like arbitration?” Gary said no and explained how he worked simultaneously with both members of a divorcing couple. I told Gary I wanted to learn more, and he invited me to observe mediations in his office in Mill Valley, California. After two days of watching Gary in action, I was thrilled at the possibilities. Mediation, I thought, could help humanize legal education and lawyers and their clients. I also assumed that what I saw in Gary’s office *was* mediation. It took me a while to realize that it was *one of many* forms of mediation and that additional models would appear in the near future.

I had in mind Gary’s mediation in 1982, when I published an article entitled “Mediation and Lawyers,”<sup>2</sup> in which I argued that lawyers would have trouble participating appropriately in mediation, in part because the “Lawyer’s Standard Philosophical Map” provided too narrow and superficial a view of the world and the people in it.

At that time, many other people shared a similar conception of mediation. This 1987 poem by Adam Curle, the late British professor of peace studies, seems to assume this view:

### Mediation/Meditation

An easy mistake, I often  
Type meditation for mediation And vice versa,

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2. See Leonard L. Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29 (1982).

Slightly amused at the difference  
 The letter T makes to the meaning.

But perhaps it's not so great.  
 In meditation we become  
 More aware of reality.  
 Escaping from the automatism  
 Of habitual responses,  
 And from enslavement to  
 Our negative emotions.  
 Thus freed we live and love with  
 Greater strength and greater understanding And so, among other  
 things,  
 Can we mediate with more effect

We hope through mediation To purify the atmosphere  
 Of needless (some say inevitable) Suspicion, angry fear and  
 Misconception  
 that impede accord. We try in fact to introduce Reality into the furi-  
 ous Fantasies swathing both  
 Protagonists who now see each Other not as human but demonic.  
 In this uneasy kinship  
 That we have with two hostile groups We strive, as in our meditation,  
 To bring awareness  
 But it is hard.  
 We only gain the measure of success Achieved within ourselves,  
 Not always even that.<sup>3</sup>

As I subsequently learned, however, processes that are commonly called mediation appear in many vastly different forms. When I studied farm-credit mediation programs sponsored by the U.S. Department of Agriculture, I noticed that in all but two of the states, farm-credit mediations averaged

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3. Adam Curle, *Mediation/Meditation*, in ADAM CURLE, *RECOGNITION OF REALITY-REFLECTIONS AND PROSE POEMS* (1987).

about one hour, while in two of the states, they routinely took several hours and sometimes several days.<sup>4</sup> These processes differed on several dimensions, and I recall thinking that they were both mediation only in the sense that noon meals at McDonald's and Sardi's were both lunch. In fact, the Understanding-Based Model does not fit within the mainstream of mediation processes. It endeavors to go deep, connect inside and outside, and develop understanding—all of which should lead to outcomes that satisfy real needs of the parties. But the vast bulk of mediations in “ordinary” civil cases in the U.S. do not even attempt to do this. Instead, they operate in the shadow of the courthouse and adopt narrow problem-definitions, focus primarily on positions rather than interests, and look for legally relevant facts and predictions about what would happen in court.<sup>5</sup>

To me, the Understanding-Based approach has always seemed the ideal—the *Chez Panisse* of mediation. Although I generally try to employ aspects of this approach and always teach my law students about it, I have routinely faced two worries, which I suspect other mediators also encounter: whether I had or could develop the skill to use this approach appropriately, and whether my mediation clients and their lawyers would willingly enter into a mediation conducted in this way.

*Inside Out* goes a long way toward easing my apprehension about both of these issues. It provides a practical, structured method for bringing more of yourself to a mediation process and helping clients do the same—thoughtfully and carefully. And it supplies numerous examples both from Gary's practice and the experiences of participants in the SCPI program. A reader can get a very good sense of how, when, and why to go deep in dealing with conflict.

Jack and Gary, along with others, have taught the Understanding-Based Model in countless workshops in the U.S. (through the Center for Mediation in Law and at both the Harvard and Stanford law schools, among others), as well as in Austria, Belgium, France, Germany, Israel, Italy, and Switzerland. (I have been privileged to work with them in a few of these

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4. Leonard L. Riskin, *Two Concepts of Mediation in Federal Farm-Credit Mediation Programs*, 45 ADMIN. L. REV. 21 (1993).

5. See Leonard L. Riskin & Nancy A. Welsh, *Is That All There Is?: “The Problem” in Court-Oriented Mediation*, 15 GEO. MASON L. REV. 863–932 (2008).

programs.) Their influence in Europe, particularly in Austria, Germany, Italy, and Switzerland, has been enormous. This work is documented in a series of books, articles, and videotapes.<sup>6</sup>

As Gary and Jack cultivated and elaborated their model, I set out on a process of categorizing the approaches to mediation, which produced a series of articles, many of which sought, at some level, to make sure that readers were aware of the Understanding-Based approach.<sup>7</sup> And in all this time, I have repeatedly gone back to Gary and Jack for motivation, inspiration, and understanding. The “Law Project” for law professors and the workshops on the Understanding-Based Model of mediation always rested on the relationships between inside and outside, the personal and professional. In various ways, they emphasized the idea that professionals, in order to most fully help clients, must sometimes understand the clients, and themselves, at a deeper level than mediators or lawyers customarily reach. Thus, such programs always integrated elements of humanistic psychology and meditation—leading to looking inside, learning, and bringing forth what is most helpful to the parties.

The meditation aspect of Gary and Jack’s work intensified when Norman Fischer, a Zen Buddhist priest and poet, joined their workshops for mediators, collaborative professionals, and others who work with conflict. The three of them have produced a systematic method for moving between inside and outside, which they call “the V,” and which you will discover inside this book and be able to take outside into your daily life and encounters with conflict. Gary, Jack, and Norman have infused and bolstered conflict management and mediation with “self-reflection” and “presence,” which overlap with what is more commonly called mindfulness. In this way, and others, they are pioneers of the robust movement to integrate contemplative practices into law and conflict resolution education and practice.<sup>8</sup>

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6. See, e.g., Himmelstein, *supra* note 1; DVORKIN et al., *supra* note 1; GARY J. FRIEDMAN, A GUIDE TO DIVORCE MEDIATION (1993); GARY J. FRIEDMAN & JACK HIMMELSTEIN, CHALLENGING CONFLICT: MEDIATION THROUGH UNDERSTANDING (2009); Gary Friedman, Jack Himmelstein & Robert Mnookin, *Saving the Last Dance: Mediation Through Understanding* (With Robert Mnookin) (Program on Negotiation at Harvard Law School (2000).

7. See, e.g., Leonard L. Riskin, *Mediator Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7 (1996); Leonard L. Riskin, *Decision-Making in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME L. REV. 1 (2003).

8. See Symposium on Mindfulness, 61 J. Legal Educ. 634 (2012).

*Inside Out* deals with extraordinarily subtle ideas and methods with great clarity, wisdom, and balance. Regardless of your background, with an open mind and a measure of curiosity, you can draw from this deep well.

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