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No Career Ladder for Mediators

A Failure of the Field

David Matz*

Abstract

As a field, mediation has excellent training and education and excellent service delivery. But it has no career path from the completion of education to a case flow practice. There is no apprenticeship process, there is no way to gain experience with significant cases, there is no structure for serious supervision, there is no way to establish a reputation for professional competence. The result is the loss of many talented, particularly young, mediators. One major cause is a failure to attract cases valued at more than small claims level and less than, say, \$100,000. The field needs to focus on this gap in its professional process.

Keywords: mediator career, new mediators, career ladder, access to field, practice cases.

Same question year after year, for 25 years. From my students, from other students, from people who suspect they have a budding case of mediation addiction: How do I start a career in this field?

That I am still getting the same question makes sense; that I am still giving the same answer is depressing. It represents, I believe, a failure of our field. The answer I give is this: "There is no roadmap to this career; you need a machete." A number of new peacemakers have not been happy with this image, but it is, unfortunately, apt.

Because I start the conversation by asking what advice they have already heard, I know the standard version: Don't leave your day job (keep your current income, use your current skills and contacts), gain experience (volunteer) and get your name out there somewhere/somehow. In a word, hustle; positive and negative overtones intended.

True, in the United States the mediation job market has changed in 25 years. Though there are nearly no 'mediator wanted' job ads, there are now a number of jobs available for people who want to administer conflict resolution programmes. And there are now just a few jobs available for people who want to handle conflict directly: e.g. ombudsman, and mediators with some government agencies like those dealing with discrimination and with labour relations.

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As a field, we have been good at providing high-quality training and education programmes, in universities and out, sometimes linked to supervised internships in small claims courts. And we have been good at providing high-quality mediators providing high-quality service, usually charging high prices. But between entry training and highly experienced service providers, we have nearly nothing: no career path, no career ladder, no way to gain experience as a mediator.

For some purposes, it is useful to divide new mediators into two groups: those in their 20s starting out to make a career and those 25 years older who are revising existing careers. Providing no career path for the former means the field is cutting off the assets of youth: a risk-taking that comes with being unattached, a lower overhead that allows them to charge less in the market, a kinship with a younger generation of potential clients, a comfort with the newer cultural tides, *e.g.* twitter. They are also more likely to find attractive, at least for a few years, a career working in conflict zones around the world. A field that cuts off those assets is pinching its own oxygen supply. By contrast, providing no career path for professional veterans – lawyers, social workers, school principals, high-tech engineers – means cutting off the perspective of age, the respect of peers at work and the additional skills of an experienced professional.

There is, in addition, a subtler problem. It is a problem that has pervaded the field of conflict resolution for decades and is one made worse by our failure to provide a career ladder for new mediators.

Conflict resolution has been, from the beginning, a field that exploits fear. For eons, handling conflict has been a task for law, politics, hierarchy, diplomacy and war. Fifty or sixty years ago our field came along claiming to bring something new, something improved, to those ancient processes. Perhaps because each of those traditional processes has been known for its dark and destructive aspects, our field has been tempted to present our wares as a way to avoid the pain-filled sides of conflict. Some of our most prominent literature has owed more to the attitudes of Dale Carnegie than to those of Daniel Kahneman. We have been more preachers than teachers. We have treated the pain, frustration, danger and ugliness of conflict as a matter of focus: with the right skills they can be reframed out of the picture. They can be labelled the behaviour of people who have not yet gotten the word. We have presented conflict as a jointly challenging crossword puzzle.

I used the phrase 'exploits fear' with obvious negative implications. But there is also a positive side to such exploitation: the promotion of hope. Conflict scares most of us; it threatens us with loss. An approach that promises to eliminate danger and risk does encourage confidence, engagement, stamina and learning. These positive responses often lead to better outcomes than the most common response to conflict: avoidance.

This hope-orientation is beneficial, but it also provides a problematic temptation to young mediators. As they try to break into a field with no institutional ladder to guide them, this literature encourages them to offer themselves to potential clients using sales claims that are not, shall we say, readily supported by data. As the new mediators are keenly aware of their own limitations, they are

caught between this self-knowledge and the tendency of the field to over-promise. This is not a strong self-marketing position.

The structure of the employment market into which new mediators come is also a problem. Conflicts and mediators find each other in one of three ways. Lawyers, growing accustomed to the benefits of mediation, are its most common advocates, persuading clients that it is an advantageous move. In addition, there are spigots, institutions or actors that control the flow of conflicts, that have no stake in the shape of the outcome, but that do have an incentive to resolve cases quietly and efficiently. The most visible spigots in our society are judges, often those with administrative responsibility for the efficient flow of cases; other examples are school vice principals and human resource administrators. The third population that brings conflict to mediators is the parties, but this demand source has been disappointingly low. This has been so for 35 years. For many years we explained this low level of party demand by blaming a lack of popular education or obstruction by attorneys. Those explanations may still have some validity, but not much. (The field of divorce mediation may be a modest exception here; an informal survey suggests that the caseload of divorce mediators is created no more than one third of the time by the parties; and often the percentage is lower than that.)

Are there yet deeper reasons that make it difficult for new mediators to gain experience in mediation? Here are some hypotheses.

Hypothesis 1: Mediation is inherently a smaller field. Almost any other profession can be engaged by one troubled client. Mediation requires that two parties, already in major disagreement, agree at the same moment on the value of mediation, the selection of the mediator and the source of payment. Fewer circumstances will thus arise that produce the request for a mediator.

Hypothesis 2: There are downward pressures on the amount mediators can bill. Competition, of course, is one. In many cities, there is an oversupply of mediators. (The energy to expand the field comes more from mediators seeking work than it does from parties seeking help.) Mediation is often advertised as less expensive than litigation, and many cases already involve an attorney's bill. One result: There is less money in the mediation firms to underwrite in-house supervision time.

Hypothesis 3: The same energy that has produced an increase in the use of mediation has produced a flow of negotiation trainings and courses. These are offered by free-standing trainers and by law, business and international relations schools. Assuming these negotiations educational efforts have worked, people (and lawyers in particular) should be better at working out their conflicts without mediators. When some litigators say "if I can't settle it, it can't be settled," they may well be, increasingly, correct. Success in one part of our field may account for failure in another.

Hypothesis 4: Clients (with attorneys or not) have more confidence in individuals than they do in organizations. If mediator X is unavailable, they prefer to seek out mediator Y, about whom they also know something, rather than someone else in X's firm. As a result, firms find it difficult to transfer cases to younger colleagues in the same firm.

Hypothesis 5: There may be a dollar value of conflicts below which parties are unwilling to pay for mediation. Sliding scales are supposed to address this, but it has not been successful at attracting the cases valued between \$20,000 and \$100,000.

Taking all these hypotheses together, we find that the major problem for training younger mediators is a lack of cases with which they can gain (especially supervised) experience. Other fields have responded to this challenge with highly differentiated training structures: Young doctors, after a substantial supervised training (in medical school, internship and residency), work in teams in hospitals. Young attorneys work on cases supported by senior attorneys, billing less per hour, often doing the bulk of the work. This leveraging works. The young professionals have the training to do a subset of the jobs well enough to be trusted, if supervised, and the firms/hospitals budget an amount for supervision. Mediation has none of these structures.

With all these obstacles, what do graduates of training and education programmes actually do with their skills? One group clearly does use the machete. This is arduous, is often discouraging and favours those with a strong will. We have recent graduates (and they are typical of graduates from many programmes) who are volunteering, mediating cases for pay in their hometowns, taking active roles in conflict resolution associations, writing for journals and blogs, serving on boards, taking part time jobs that use mediating skills but that do not mention such skills in the job description and taking other jobs that just pay the bills. And some of them do reach positions of great professional satisfaction: we have graduates who after 15 years have achieved high-level mediation positions with the United Nations or the World Bank and ombuds positions with leading hospitals and universities. Another group uses their conflict-resolving skills in jobs where neither the title nor the job description implies those skills. These include architects, HR professionals, church ministers, school vice principals and (most prominently and perhaps in the long run most significantly) parents. A third group acknowledges that it never found a way to engage their education in life after graduation.

One might have expected that the use of volunteer mediators, long a prominent part of the field, would provide opportunities for newly trained mediators to practice their craft. This has been true and has benefited from co-mediation and/or good supervision, but their caseload has been largely confined to cases customarily within or close to the jurisdiction of small claims.

Some new programmes are beginning to consider this issue. Two examples: An effort in a Los Angeles area bar association is planning a panel of less experienced mediators to handle cases under \$100,000 in value. Another plan being discussed in Boston would have high-end firms take on young mediators and supervise them in handling cases in the same value range as that used by the bar panel.

There are other possibilities on the horizon. One approach is the gradually growing subfield of organizational systems design. Aimed to help organizations think more systematically about how they handle conflict and how they might reorganize to handle it better, one outcome may be the creation of organizationally based conflict management jobs. Another possibility derives from the use of

technology. Mass disputes generated by large organizations (*e.g.* eBay) provide one possible role for new mediators. Disputes in which the parties are at a distance from each other provide another.

In 1993, I was directing the Graduate Certificate Programme in conflict resolution at the University of Massachusetts, Boston. Our Provost asked that I add a master's degree programme. I worried there was no job market for graduates. So I spoke with one of the wise men of our field, Jim Laue, director of the only then-existing master's in conflict resolution at George Mason University. He said, "I tell them when they apply that part of being a conflict resolver is persuading the job market that there is a need for us. Don't enter the programme if you are not prepared to do that."

I was buoyed by Jim's view, but when we started the programme in 1995 I took the precaution of admitting only students who already had a job and who were already well-launched on a career. We admitted school teachers, architects, church ministers, lawyers and social workers. Many an application said, "I find that conflict is a large part of my work, and graduate school taught me nothing about that."

Starting in 2003-2004, the number of highly qualified younger applicants, in, say, their mid-20s, began to grow dramatically. This had something to do with an increase in our offerings in international conflict resolution, but also, I think, with an increase in the number who just wanted conflict resolution to be part of their career. A surprising number said they wanted this degree and then intended to go to law school. Why the conflict resolution degree first? "So I can then practice the kind of law I want." Today the student body is about 50% under 30.

So there are three ways to look at this situation. Perhaps the market, by not providing a demand for mediators doing under-\$100,000 cases, is telling us that there is little party-felt need for such a service and that perhaps we need to cut down the number of graduates in this field. Or, perhaps our graduates are content using mediation skills as integral parts of their lives with no need to specifically identify themselves as mediators. Or, perhaps this is a question of marketing, pricing and social invention. Perhaps we are at a stage in the development of our field where we need to pay more attention to upcoming generations of mediators and to create new delivery structures. I suggest we put energy into social invention, and I urge us to look hard at what educational institutions and service providers can do for the careers of the new people in our field.