ESSAY

REACHING BEYOND THE "TOOLS OF THE TRADE": ANCHORS AND SIGNPOSTS TO ENHANCE MEDIATOR EFFECTIVENESS

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I.   Introduction

During my 48-year career as both a professor and program director in Conflict Resolution programs at various universities and the head of a modest organizational consulting firm, I have participated as a student and instructor in many mediation and other related Alternative Dispute Resolution classes and training. Alternative Dispute Resolution, often referred to as ADR, can be thought of as any means of dispute settlement outside of a courtroom. Various well-known methods of ADR include negotiation, conciliation, facilitation, mediation, and arbitration. I usually think the training and classes I have attended are of high quality, both in content and delivery. Nevertheless, I am often concerned that participants might leave the class or workshop believing that if they understand the stages and the necessary techniques and follow the process of mediation or other ADR interventions, they will be effective in their role. Furthermore, instructors and workshop leaders can observe participants practicing the "tools of the trade." Given much of the feedback to participants is likely to be positive, I suspect many participants exit the class or workshop, thinking, "if I can memorize the stages, the specific steps, and practice the techniques, I can do this and be successful!"

Although many participants who go through a class, or who go through training—or who do both—can likely function adequately in the mediation role, I believe both mediator education and delivery would be enhanced if training also emphasized some additional

information, such as the characteristics, mind-set, and reflective practices that capture more of the science, art, and spirit of mediation. One way to do this is to think about theories, concepts, frameworks, and models that serve as "anchors" or "signposts" of successful mediators.[1] This essay is an attempt to present some of mine that has helped guide my practice for many years, particularly in mediation and other ADR processes.[2]

Being heavily involved in academia for most of my adult life, I have been exposed to expert mediators' brilliant ideas and strategies including books such as the 2013 book by Jean Poitras and Susan Raines which described best practices of expert mediators and how they address difficult mediation challenges.[3] What I have found is that certain concepts and theories from books outside our particular field have been even more impactful than books on mediation, specifically in grounding. During my work some of my favorite books have been grounded in conflict resolution and consulting practices. Within this article, I will comment on some of these non-specific mediation works by Michael Lang, Chris Argyris, Joseph Luft, and Harry Ingram, Peter Senge, Donald Schön, Lee Bolman, and Terrance Deal, and Charles Manz, et al. and give examples of how I have utilized their insights.

In his recent book, *Guide to Reflective Practice in Conflict Resolution* (2019), Michael Lang promotes a very expansive view of theories that he defines as "the vast collection of beliefs, principles, biases, models, doctrines, philosophies, and standards that shape our perception of the world around us and influence our decision-making."[4] These accumulated underlying beliefs and "constellation of theories," including "core values, applied theories, models of practice, personal styles and norms of behavior, professional experience and contextual factors,"[5] shape our perceptions about how we view the situation at hand and subsequent actions. As

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[1] The author uses the words "anchor" and "signposts" consistent with the following definitions: "Anchor" is something that grounds you in yourself, makes you feel calmer, more at ease and more confident of yourself; or a reliable or principal support. "Signposts" give information or guidance, an immediate perceptible indication, or an obvious clue.

[2] Some of the insights, concepts, and frameworks discussed in this article have previously been written about in earlier publications by the author. *See* NEIL H. KATZ, *Milestones on a Journey in Peace and Conflict Studies*, *in* CRITICAL ISSUES IN PEACE AND CONFLICT STUDIES 371 (Thomas Matyók et al. eds., 2011).

[3] JEAN POITRAS & SUSAN RAINES, EXPERT MEDIATORS: OVERCOMING MEDIATION CHALLENGES IN WORKPLACE, FAMILY AND COMMUNITY CONFLICTS (2013).

[4] MICHAEL D. LANG, THE GUIDE TO REFLECTIVE PRACTICE IN CONFLICT RESOLUTION 72 (2019).

[5] *Id.*

such, these "theories explain phenomena, give meaning to events, structures, patterns, and behavior."[6] Lang also supports the assertion of Argyris and Schön, that theories serve three primary purposes: an explanation (of a given situation), a prediction (of expected behaviors), and control (of variables during interaction).[7]

With these definitions in mind, let me articulate some of my "accumulated underlying beliefs" and "constellations of theories" by offering brief descriptions of some of my favorite concepts and books, and how I rely on them to serve as "anchors" or "signposts" for my mediation and ADR work. I will also offer examples of particular incidents when I used these constellations of theories to meet challenging situations in mediation and learn from opportunities missed. I will also discuss some specific concepts and models from some of the influential work of authors Chris Argyris, Joseph Luft and Harry Ingham, Peter Senge, Lee Bolman and Terrance Deal, Charles Manz and his co-authors, and Michael Lang.

Much of Chris Argyris' work on communication, barriers to learning, and consulting have been useful in my practice. For this essay, I focus on one message of his to which he continually refers—what Argyris calls his "Core Values" that inform his work. According to Argyris, work in our field should always be guided by three interrelated principles: (1) the need for valid data; (2) the necessity of free and informed choice; and (3) the importance of internal commitment to the choice.[8]

Applying these principles in practice, the mediator assists disputants to acquire valid information through a variety of procedures and skills. These include establishing effective ground rules and understanding of roles; reflective listening to display understanding and create rapport; summarizing of data presented by each of the parties; and other rigorous data gathering and data testing procedures which prove credible to the parties and mitigate disputant's defensiveness and denial tendencies. Then, based on new information and understanding, the disputants can make a free and informed choice about whether or not to participate in "conciliatory efforts." Valid information facilitating free and informed choice helps ensure internal commitment to the selected action's implementation and durability. These core values are essential

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6 *Id.* at 71.

7 *Id.* at 81.

8 CHRIS ARGYRIS, OVERCOMING ORGANIZATIONAL DEFENSES: FACILITATING ORGANIZATIONAL LEARNING 20 (1990).

anchors for my mediation and facilitation work, particularly when I engage in efforts with diverse and competing groups.

My allegiance to Argyris' core principles influences additional strategies I employ in my mediation. As we know, disputants often have quite different renditions of "what happened" that led to mediation. There is very rarely one consistent set of "facts." In my mediation, I try to do what I can to have parties understand the critical distinctions between verifiable facts—what a video camera would see or a recording device would hear—and inferences or explanations of actions that follow those facts, and the link of these inferences to attribution of intent or motivation. I sometimes even mention research findings that support the view that human beings naturally assign intent or motivation to a set of behaviors. In conflict situations, they tend to assign positive intent to themselves and negative intent to their counterpart. On occasion, I might even have them engage in a fun and straightforward exercise on separating facts from inferences. The exercise highlights the nearly impossible task of totally separating facts from inferences and how important it is for good mediators to help participants consider multiple explanations of intent to a given set of facts.

Regarding the principle of "free and informed choice," I try to assist the parties in building on new insights gained through the validation of the data phase. I use several techniques to aid in this effort, such as visioning the impact of possible behavior change (sometimes in private caucus) and helping the parties separate their interests from positions to clarify further the "why" that is motivating the "what" they want to happen.[9] The hope is that disputants would more fully realize the tangible and intangible effect on themselves from the desired behavior change of the other party to alter the situation. When this occurs, some conciliatory gestures and movement toward agreements and implementation are more likely to be followed based on internal commitment.

Joseph Luft and Harry Ingham are the co-authors of the well-known Johari Window framework.[10] I continuously remind myself that my role as a mediator needs to be guided by the goal of expanding awareness and essentially design the mediation process to serve as an "agent of opening" for the benefit of the disputants. One effective way of doing this is to provide a welcoming and safe

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[9] Neil H. Katz et al., Communication and Conflict Resolution Skills 147 (3d ed. 2020).

[10] Neil H. Katz et al., *Overt and Covert Group Dynamics: An Innovative Approach to Conflict Resolution Preparation*, 33 Conflict Resol. Q. 332 (2016).

environment and strategy to allow them to engage in self-disclosure to minimize the "hidden area" and allow feedback from the mediator and the other party to minimize the "blind area." By diminishing the hidden and blind areas, mediators are assisting clients in expanding the "open area," providing the key to learning and choice.

Self-disclosure from the parties and useful feedback to the parties does not easily happen by itself. Mediators can play a significant role in assisting in its possible use. The third party's emotional intelligence competencies, especially in the areas of validating emotions as legitimate and important data and recognizing and responding appropriately to the expressed and unexpressed feelings of the disputants, will be critical factors in propelling this dynamic. I can encourage the possibility of self-disclosure and conciliatory gestures through providing physical and psychological safety; modeling self-awareness and self-management; activating sensory acuity by noticing changes in responses during the session; and utilizing powerful rapport-building techniques such as reflective listening, matching and pacing, and the intentional use of mirroring representational systems.[11] Furthermore, the possibility that "feedback" can be helpful for the disputants necessitates the mediator being skilled enough to "coach" the parties in how to give feedback, and how to receive it and make use of it. Also realizing that emotional states are among the most prominent aspects of social interaction—especially under conditions of interpersonal conflict—mediators can continually model high-quality emotional intelligence competencies to enhance their positive influence on the disputants while assisting the negotiation confidence and skills of the parties in their own negotiations.[12]

Peter Senge's work on mental models in *The Fifth Discipline* (1990) has proved enormously helpful.[13] Senge reminds us that we carry unwritten, and often unspoken, models or images in our head that unwittingly influence the meaning we assign to behavior and events, shape what we see, hear, or pay attention to, ultimately guiding our thoughts and actions. These models or "scripts" are particularly powerful since they operate mostly at the covert or unconscious level. We tend to seek evidence to corroborate and

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[11] *Id.* at 15.

[12] Neil H. Katz & Adriana Sosa, *The Emotional Advantage: The Added Value of the Emotionally Intelligent Negotiator*, 33 CONFLICT RESOL. Q. 57–74 (2015).

[13] PETER M. SENGE, THE FIFTH DISCIPLINE: THE ART AND PRACTICE OF THE LEARNING ORGANIZATION (1990).

deepen our allegiance to our "mental models," instead of giving credence to contradictory evidence or minimizing the worth of the contradictory evidence by characterizing it as an "exception to the norm." The result is to develop "psychic blindness" and limit chances for learning.

I believe the research and information on mental models are critically crucial for mediators and is a salient factor in determining our success. It is also congruent with Michael Lang's definition of "theories." However, I believe that Senge would argue that mental models are even more influential since many of these "scripts" go unexamined, and negative underlying beliefs can severely limit our capacity for learning. Nevertheless, constructive mental models can be a significant factor in assisting our mediation practice and might help determine our best candidates for this important role. Mental models about people, their motivation, their ability to represent themselves, and their capability to change expectations and behaviors voluntarily are all factors that make mediation possible. Some examples of possible mental models that I attest help the success of mediators are:

- People's perceptions and stances on an issue are heavily influenced by where they sit in life;
- People are doing the best they can at any time, given their circumstances;
- People represent their world as they experience it and remember it, and their stories need to be received as legitimate representations of their thoughts and feelings;
- People are often motivated by a desire for a good night's sleep and the desire to put the conflict in the rearview mirror;
- People have a significant capacity for self-examination, creativity, and goodwill;
- Mutually beneficial solutions are most likely possible; and
- People are capable of behavioral and attitudinal change if they perceive it as self-interest and/or critical to their survival.

In addition to Senge's caution about the powerful effects of unexamined mental models, he also supports the idea that human beings can challenge themselves to elevate these mental models into our conscious thoughts and examine them for their utility in working for us to achieve our desired outcomes. Mediators can then assess whether their mental models fit within the context of mediation or, for instance, fit better in the role of an arbitrator,

judge, social worker, or counselor. In other words, we should engage in the difficult work of confronting our mental models that are not congruent with the outcomes we seek for our work and create ones that will facilitate success. If this is the case, I believe that mediators' training should include exposure to mental models appropriate to this approach and include activities for self-examination.

Let me now focus on brief descriptions of four books that serve as important anchors for my ADR work and give some examples of how they might prove useful. These books alter how I look at the world, the meaning I assign to people and events, and my thinking about my mediation and ADR practice that forms my strategy and actions. The four books are *Reframing Organizations: Artistry, Choice and Leadership* (6th ed., 2017) by Lee Bolman and Terrance Deal; *The Wisdom of Solomon at Work: Ancient Virtues for Living and Leading Today* (2001) by Charles Manz and co-authors; *The Reflective Practitioner: How Professionals Think in Action* (1990) by Donald Schön; and *The Guide to Reflective Practice in Conflict Resolution* (2019) by Michael Lang. Several of these books are primarily situated in organizational life and focus on leadership; yet, I believe they have significant relevance to our work as practitioners and scholars. Indeed, my conflict intervention work has been heavily influenced by my awareness and integration of this material.

II.   THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION

A book that I continually revisit is *The Reflective Practitioner: How Professionals Think in Action* (1990) by Donald Schön. This work has allowed me to think more deeply about what I do in my conflict interventions, assume a more professional and confident persona, and talk about my practice professionally. Schön postulates that successful practitioners do much more than the conventional notion of others that we "fly by the seat of our pants" or engage in an impulsive "hit-or-miss" mentality and behavior. In his study of professional practitioners in various fields, Schön discovered that successful practitioners were adept in "reflecting-in-action" and, in fact, "becoming a researcher and testing theory in the practice context." Like good jazz musicians or professional baseball pitchers, successful professionals get a feel for the material

they are working with and make on-the-spot minor adjustments to the phenomenon they encounter. When they are "in the groove," the actions become more repetitive and routine, and the intuitive, spontaneous performance yields the intended results. However, when mostly automatic performance leads to surprises, pleasing, or promising, or unwanted, expert practitioners need to respond with "reflection-in-action." In doing this, the professional reflects on the insights that have been implicit in his/her actions, understanding that he/she surfaces, criticizes, restructures, and embodies further action. As the professional surfaces and criticizes his/her initial understanding of the phenomenon, constructs a new description of it, and tests the new description by an on-the-spot experiment, a new "theory in action" emerges. Thus, the experiment serves to generate a new understanding of the phenomenon and a change in the situation brought about by the new action.

Why might this perspective offered by Schön be valuable to practitioners in the field of conflict resolution theory and practice? I suspect it might be useful in several ways. One way is how we think about ourselves and present ourselves to the public. At best, we are practitioners who perform in professional situations, much like lawyers, doctors, accountants, teachers, or other professionals. By logging time in our profession, we also "practice" our craft so we are prepared and ready to encounter somewhat similar situations. Therefore, our professional practice becomes more repetitive and routine, and our knowing-in-practice becomes tacit and spontaneous. Our reputation among our peers and the public as "successful professionals" is enhanced, and our confidence and competence grow.

However, Schön warns that this "upside" of professional practice also has a potential "downside." As we become more respected and comfortable in our "practice," our analysis and actions become more predictable and repetitive. We might become susceptible to "over-learning" and prone to miss significant opportunities to think about what we are doing. The way to overcome this vulnerability is to continue operating as a "reflective practitioner" throughout our careers so we can display "principled flexibility," continuing to learn and respond to both familiar and unfamiliar phenomena and enhance our effectiveness.

III. THE GUIDE TO REFLECTIVE PRACTICE IN CONFLICT
RESOLUTION

In addition to Michael Lang's unique description of theories
and his "constellation of theories" alluded to before in this essay, I
have begun to be influenced by many other insights contained in
this recent, very instrumental book. Lang's contribution builds on
the "reflection in action" process of Donald Schön's 1990 work.
Lang's book is even more useful to me since he situates his work in
the context of mediation and conflict resolution. His main thesis is
that "reflective practice is a means for thoughtfully and introspec-
tively examining professional action and then, through self-assess-
ment, learning to enhance our abilities and skills," relying less on
"guidance and advise" and more on "self-discovery."[14]

Lang's view of reflective practice directly confronts some of
the shortcomings of relying solely on expertise and accumulated
past experiences, especially concerning human behavior. Admit-
ting that experienced practitioners develop a well-regarded set of
intervention tools that work in many situations to produce antici-
pated results, Lang also reminds us that human behaviors and reac-
tions within conflict situations may be unpredictable and uniquely
affected by multiple conscious and unconscious variables. Under
such conditions, experts risk learning and effectiveness when they
repeat the same professional patterns constantly and, perhaps,
semi-automatically, without truly understanding why these inter-
ventions succeed or fail.[15] When this occurs, we will more likely be
unable to respond to unexpected situations that deviate from our
preliminary experience-based and often unaware assumptions. El-
ements of reflective practice are necessary to respond to these un-
anticipated "critical moments"[16] and allow time to re-evaluate our
assumptions and adjust our understanding of the situation to be
followed by new interventions.

Lang's "Nine attributes of a Reflective Practitioner" are sali-
ent to my understanding of good practice.[17] However, for this es-
say, let me comment on two I think are especially useful for me to
remember. The first is Lang's emphasis on "curiosity," character-
ized by a "boundless and childlike sense of wonder" and "inquisi-

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[14] LANG, *supra* note 4, at 15.

[15] *Id.* at 16.

[16] *Id.* at 18.

[17] *Id.* at 39.

tiveness without a predetermined goal . . . to determine facts."[18] Furthermore, Lang's form of curiosity shifts from "practitioner-centered" to "participant-centered" by having the participants' interactions assume greater importance furthering the process of exploration and discovery.[19]

The second attribute I found to be particularly interesting was captured by the author's phrase, "hold on tightly, let go lightly" referring to "an intentional process of generating a working hypothesis based on observation of phenomena and application of theory" along with the ability and willingness to "alter or abandon a hypothesis that on examination and reflection, is deemed insufficient or irrelevant."[20]

Lang's three sequential stages of reflective practice are also something I want to incorporate more into my work intentionally. In the first stage, "Reflection-Before-Action" occurs when a practitioner prepares for a case and includes becoming aware of our underlying theories. In the second phase, "Reflection-in-Action" incorporates much of what Donald Schön promoted in his book on *The Reflective Practitioner* (1990), by being aware of "critical moments" in which the "practitioner notices something unexpected or puzzling that draws immediate curiosity."[21] Then, "thinking on one's feet," the practitioner reflects on his existing "theory," substitutes a new hypothesis, and conducts new "experiments" based on a new hypothesis. "Reflection-on-Action" takes center stage after the intervention has been completed. This stage is critical to our ongoing learning. We draw insights from reviewing the experience, sharpening our skills, deepening our knowledge, or altering our thinking (our assumptions or governing values) about our strategies and tactics.[22]

IV.   REFRAMING ORGANIZATIONS: ARTISTRY, CHOICE, AND LEADERSHIP

Lee Bolman and Terrance Deal's work illuminates four "frames," where a frame is defined as "a coherent set of ideas or

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[18] *Id.* at 39, 41.

[19] *Id.* at 43.

[20] LANG, *supra* note 4, at 60.

[21] DONALD A. SCHÖN, THE REFLECTIVE PRACTIONER: HOW PROFESSIONALS THINK IN ACTION 68 (1990).

[22] LANG, *supra* note 4, at 135.

beliefs forming a prism or lens that enables you to see and understand more clearly what's going on in the world around you."[23] These frames function as a "cognitive map" which affects your understanding of where you are, what to look for, what it means, and what to do. Therefore, they serve as a diagnostic tool and a model for planning strategy and action. The frames help us make sense of our experience, allow for sophisticated judgment, and engage in multi-faceted and effective action. The four frames or lenses are the structural frame, the human resource frame, the political frame, and the symbolic frame.

Bolman and Deal's research supports the finding that most of us are limited in the use of multiple frames and tend to rely on our preferred frame or "natural disposition." This reliance on one frame most likely, or two frames at best, works for us to some extent in that we are going with our "strength." However, similar to the concept of Johari's Window, if we are not aware of our blind spots or inability to access multiple frames, our limitations can affect our understanding of events, the decisions we make, and outcomes we achieve. Mediators and other ADR practitioners may encounter situations that demand a unique combination of frames or a frame different from their original choice, which past experiences never required. Knowledge and use of multiple frames facilitate a more holistic and penetrating perspective on people and events, avoid individual bias and psychic blindness, and expand choices and effectiveness. Let us now examine the four frames before speculating how they might add value to our work's theory and practice.

A.   *Structural Frame*

Structural leaders see their primary task as addressing confusion and chaos by clarifying goals, roles, and expectations. According to Bolman and Deal, "structure needs to be designed with an eye toward strategy, the nature of the environment, the talents of the workforce, and the available resources."[24] The main activities of the leader are to establish, maintain, and reaffirm procedures and policies; focus on tasks, facts, and logic (as opposed to personalities and emotion); and to design and implement structure to fit

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[23] Lee G. Bolman & Terrance E. Deal, Reframing Organizations: Artistry, Choice and Leadership 43 (6th ed. 2017).

[24] *Id.* at 60.

circumstances and align with the environment so that people can perform well and achieve goals. Meetings are formal occasions to transmit facts and information, conduct objective analysis, and make rational decisions. Bolman and Deal's metaphor for understanding the structural frame is the "well-oiled machine" or "factory," with the leader serving as the architect or analyst.[25]

B.   *Human Resource Frame*

As Bolman and Deal point out, the relationship between people and organizations is core to understanding the human resources frame.[26] The human resource leader needs to address anxiety and uncertainty by primarily focusing on human needs, desires, and building positive relationships. The leader's main task is to keep people involved and participative and to keep communication open where participants share information and feelings. By being responsive to the needs of individuals and supporting their goals, leaders can count on their dedication and loyalty. Leaders demonstrate their responsiveness by communicating warmth and concern, listening and respecting others' aspirations, and giving people the resources, autonomy, and opportunity to succeed. Decision-making is an open, empowering, consensus-based process to ensure understanding and commitment. Bolman and Deal's metaphor for understanding the human resource frame is the "extended family" with the leader serving as the facilitator or servant.[27]

C.   *Political Frame*

The political leader addresses conflicts and feelings of disempowerment by creating forums where issues can be negotiated, and alliances are redrawn. A good leader is an advocate and astute negotiator who understands constructive politics and is comfortable with conflict, especially around scarce resources and the distribution of resources (who gets what). The political leader's main agenda is to manage conflict and ensure survival by creating a power base and exercising influence carefully, particularly with key players or stakeholders. They create arenas where they can jockey

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[25] *Id.* at 390–91.
[26] *Id.* at 118.
[27] *Id.* at 392.

for influence, network and build alliances or coalitions, negotiate their differences, and come up with reasonable compromises. Bolman and Deal urge leaders to "learn to acknowledge, understand, and manage political dynamics, rather than shy away from them" and to understand that "politics is a way of life rather than a dirty pool."[28] Meetings and decision-making forums are mainly an opportunity to air conflicts, exercise or gain power, and win concessions. Bolman and Deal's metaphor for this frame is the "jungle" with the leader posing as the advocate or negotiator.[29]

D.   *Symbolic Frame*

The symbolic leader deals with the formidable barriers of loss of direction and hope and clinging to the past by providing vision, meaning, and inspiration. They believe their most important job is to give people something that they can believe in. Bolman and Deal suggest, leaders need to "serve a deeper and more enduring role if they are models and catalysts for values like excellence, caring, justice and faith."[30] They realize that events have multiple meanings, so what is important about events is not what happened, but what it means to people. They are adept at using metaphors, ceremonies, rituals, myths, stories, and artifacts. The symbolic leader communicates passion, is visible and inspiring. Meetings are opportunities to develop shared values and reframe meaning while modeling responsibility and accountability. Bolman and Deal's metaphor for this frame is the "theatre" or "temple," whereby the leader serves as playwright, poet, or prophet.[31]

E.   *Using Frames*

Let us examine how the intentional use of these multiple frames can enhance our mediation and ADR practice, in particular:
- The ability to understand the dynamics of the dispute;
- The ability to build rapport with the disputants;
- The ability to understand our role in a holistic way; and

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[28] *Id.* at 184.
[29] BOLMAN & DEAL, *supra* note 23, at 392.
[30] *Id.* at 397.
[31] *Id.* at 394–95.

- The ability to formulate and deliver more effective interventions.

For instance, familiarity with the structural frame equips the mediator and ADR practitioner with empathy and regard for disputants who will find comfort in mediation in terms of rules, policies, and procedures. They also relate well to rationality and logic. Mediators will create safety and comfort for disputants with a high structural disposition by emphasizing clear goals and stages to the process and enforcing adherence to ground rules that are established. The intervention's environment, including the location of meetings, chairs, and equipment, will all be important for disputants operating primarily through a structural frame. This understanding of clients' possible needs when deciding in which frame or frames your mediation needs to occur to be successful is also a straightforward example of the importance of Lang's concept of reflection-before-action as previously noted.

The structural frame also has implications for how mediators conceive their role and determine the success and outcome of their intervention. Mediators who view themselves as analysts or architects provide a conducive environment by which disputants can exchange facts and information. The mediation itself is viewed as a formal occasion for making sound, rational decisions based on new information, and to return to a life of more predictability and order. Levels of satisfaction with the process will depend on issues being at least partially resolved, opportunities to author suitable agreements given the facts and logic of the situation, the personalities of the disputants, and the possible consequences of no settlement.

From the human resource frame's vantage point, the mediator's role and work will be quite different. The leadership role is as servant or patriarch of the "extended family." The head of the family's work is to demonstrate care for family members, serve human needs, and tend to human interactions and relationships among members. Fulfillment and satisfaction of the intervention are measured by the extent that feelings were expressed and understood, fundamental human needs were acknowledged and accepted, and communication was open and honest. Meetings are viewed as informal occasions for sharing feelings and involvement in issue exploration and joint problem solving to engender commitment. The mediator will view herself as an understanding, empathetic parent figure whose main job is to support and empower the disputants, communicate warmth and concern, listen to and re-

spect their aspirations, and extend opportunity to the disputants to discuss their different perceptions and problem solve. In this frame, the ultimate goal will be to repair the relationship emerging from the increased understanding and empathy flowing from the dialogue that takes place and facilitate transformation of the human heart.

Mediators operating out of the political frame will view their role and the intervention process quite differently. Their role will be the overseer of the arena or jungle who will keep inhabitants safe by being an advocate for them and the process and will assist the parties in the trade-off bargaining that will allow each of the participants to survive. The third party's job will be to provide an arena for negotiation and compromise and, if possible, to rally the disputants against an even more formidable outside enemy (perhaps the legal institutions and procedures, or people who would covertly or overtly benefit by the continuation of hostility). The mediator will look for common interests and use persuasive techniques to influence key stakeholders to bargain and settle. Most importantly, the mediator will recognize that enduring differences in values, beliefs, information, interests, and perceptions of reality are laws of the jungle, and that the goals of a conflict intervention are to assist the parties in recognizing both their power and the limitations of their power, and to bargain in a trade-off environment. Satisfaction will emerge from the fact that power was acknowledged and exercised, losses were minimized, some gains realized, some form of justice was achieved, and survival was assured.

Mediators who operate out of the symbolic frame exercise considerable influence through the definition of their role and their behavior. Given the assumption that much of life is ambiguous and uncertain, the intervener sees her chief job is to create meaning for the participants. The mediator, functioning in her temporary role as a prophet or poet or playwright, does not concern herself with facts, logic, and rational analysis as much as creating hope and faith, meaning and direction through the creation of symbols supported by rituals, ceremonies, stories, and metaphors. The intervention itself is viewed as a dramatic event for "actors" to acknowledge responsibility, produce symbols (such as an apology or some other form of an "olive branch"), negotiate the meaning of certain actions and events, confirm values and seize opportunities for concern for each other, even among those who were (or are) in conflict.

Some of the main tools for the third party are to reframe and interpret the conflict story to promote meaning and positive purpose, articulate a persuasive and inspiring vision of a less conflictual reality, demonstrate to the actors their key role in contributing to a more compelling and meaningful story, and to use dramatic and visible symbols (stories, rituals, and artifacts) to involve and inspire people. The success of the intervention will be measured not so much in terms of settlement of outstanding issues or repairing of the relationship, but in assigning new meaning to the whole experience of the conflict, the restoration of faith in the continuing mystery of life, and the feeling among the disputants and the mediator of living a life that has significance.

Now that we have explored how the mediator might operate within each of the frames, how might the mediator use this information to enhance their effectiveness? As mentioned before, Bolman and Deal's research supports the contention that most of us rely heavily on one or two of our preferred frames to support our analysis, diagnosis, and interventions.[32] Traditionally, leaders—and I suspect ADR specialists—tend to rely on logic and structure, and good communication and rapport building skills to control the mediation process and gain the trust and cooperation of disputants. This finding suggests that the political and symbolic frames are the most underutilized and might give us the most return on investment by their use. The mediator's ability to create an effective arena and engage the parties in interest-based negotiations and creative problem solving, and to inspire disputants by creating new meaning to their previous and current interactions can certainly impact mediator success.

V.   THE WISDOM OF SOLOMON AT WORK

The second book, *The Wisdom of Solomon at Work: Ancient Virtues for Living and Leading Today*, has also had a significant impact on my mediation and ADR practice, and might add to our understanding of the role and characteristics of exemplary conflict interveners.[33] Charles Manz and his co-authors offer compelling vignettes of virtues that have endured the passage of time and are reflected in and reinforced by different religious traditions over the

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[32] *Id.* at 324.

[33] CHARLES C. MANZ ET AL., THE WISDOM OF SOLOMON AT WORK: ANCIENT VIRTUES FOR LIVING AND LEADING TODAY (2001).

centuries. Each of the virtues is introduced through a biblical character and illustrated through stories from the Old Testament, followed by a discussion of how these enduring values are demonstrated in contemporary professional practice. The virtues explicated in the book are:

- The faith of Job;
- The courage of David;
- The compassion of Ruth;
- The integrity and justice of Moses; and
- The wisdom of Solomon.[34]

Even though the authors primarily give examples of these virtues being exercised in business practice, understanding and modeling these virtues might very well be important in uncovering the heart and soul of effective mediators. Let me suggest some ways in which these virtues might relate to the essence of both conflict resolution interventions and mediation practice.

The compassion, courage, and faith of any mediator will be tested throughout the intervention. Compassion, characterized by "having empathy for the struggle and suffering for others" as well as "how deeply we choose to see beyond ourselves and how deeply we choose to respond to what we see"[35] will be a major determinant of the consultant's ability to create and maintain rapport with the disputants, and the willingness of the parties to transform their understanding of the dispute and consider options to address their issues. Courage, defined as "staying present to life's most difficult challenges, to work with them, and to learn from them,"[36] will need to be activated when third parties enforce ground rules and introduce various interventions to assist, and sometimes necessarily confront, the parties through the mediator's role of the "agent of reality." Faith, most of all, to "consistently do the right thing"[37] and strongly believe in the process and principles of mediation is essential as the mediator faces many challenges to her assumptions, values, and beliefs.

It is the acting out of faith, courage, and compassion that enhances the potential for mediator's displays of integrity and justice. The authors view integrity as the virtue that one engages by acting responsibly and "empowering others to be responsible for and ad-

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[34] *Id.* at vii, viii.

[35] *Id.* at 85.

[36] *Id.* at 143.

[37] *Id.* at 142.

dress their inner struggles."[38] Mediators display this virtue throughout the process by allowing the parties to define the issues, explore options, and voluntarily commit to action plans if they so desire. We also pursue justice when we emphasize fairness and model impartiality, equality, and respect for the disputants and their rights throughout the intervention.

All of these other virtues are in support of the most fundamental and penultimate virtue: the wisdom of Solomon, characterized as a "wise and discerning mind" that allows one to display "superior judgment and a sound course of action."[39] Activating these virtues, mediators will access "transcendent wisdom," a "deep form of knowing that flows from reflection upon experience and is sensitive to human encounters with life."[40] It is noteworthy to see that the author's view of "transcendent wisdom" is compatible with recent research on emotional intelligence and the fact that it tends to increase with age as one necessarily demonstrates impressive resourcefulness and resilience in navigating through the highs and lows of numerous life challenges.[41]

VI.   Examples of Intentional Use of Insights

I conclude this essay with some additional, more detailed examples of particular mediations and facilitations to demonstrate how I have incorporated some of these "anchors" to make a tangible, positive difference in my work. For this purpose, I will emphasize the insights of Michael Lang, and Lee Bolman and Terrance Deal, who have had the greatest influence on my practice. These examples include "pivoting moves" made in the heat of the action, planning strategies that paid off, and lessons learned from reflecting on "missed opportunities."

VII.   "Community Benefits" Mediation

In working with negotiators representing a Solid Waste Authority ("SWA") and representatives of a small, low socio-economic community in mediation on possible "community

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[38] *Id.* at 116.

[39] Charles C. Manz et al., *supra* note 33, at 20.

[40] *Id.* at 20–21.

[41] Daniel Goleman, Working with Emotional Intelligence 7 (2006).

benefits,"[42] I was faced with several challenges. One was an obvious imbalance of power in terms of experience, competence, and confidence in the art of negotiation. The negotiator for the Solid Waste Authority was a polished executive who was known as an astute, experienced negotiator of high confidence and competence. Representing the town were three members of the town council who expressed their strong concerns about their lack of experience and formal negotiation skills. For this reason, the town council attempted to hire me as their negotiator. They thought it would be best for them to remain on the sidelines during negotiations or be silent members of the negotiation team. After I informed them of my desire to function as a third-party facilitator rather than an advocate for their side, I arranged for each of the two disputing parties to have a consultant work with them privately and be at the table for the negotiations. Each of the two consultants I identified to work with each side had been my student at one time in a negotiation class, was a very competent professional, and had a prior trusting relationship with his respective party. All the parties approved the guideline that my role would allow me to communicate with the coaches and the primary parties away from the table.

This arrangement, which fits into Lang's description of the *Reflection-before-Action* stage of Reflective Practice, was decisively beneficial in at least two respects. One was that the coaches could help "even the odds" in terms of confidence and competence in formal negotiations by having the coach for the town play a more active role for the townspeople as opposed to the less active role for the coach for the SWA. By agreeing to an accepted practice that the coaches could share information with me upon gaining consent from their respective parties, I was able to find out that the negotiator for the SWA had plans to retire soon and was hoping his legacy would include being thought of, and remembered for being a good guy, one who cared about his company but also cared for the well-being of his surrounding community. I was able to use this information as leverage in the negotiations by appealing in obvious ways to this salient "interest" of the SWA negotiator, mostly in private sessions with him or with him and his coach.

Ultimately, the negotiations ended in a mutually satisfactory agreement with the town agreeing not to pursue specific future liti-

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[42] "Community Benefits" is a term signifying an asset (usually money) given by a solid waste authority to a town in which a solid waste plant is to be placed. To my knowledge, it is voluntary and is not mandated by New York State. In this case, it was certainly voluntary since the plant had already been constructed and was operating.

gation in exchange for the SWA agreeing to a long-term settlement of over ten million dollars in "community benefits" to the town.

VIII.   REFLECTION-ON-ACTION AND MULTI-FRAME THINKING AND ACTION

Let me briefly describe two of many examples of how intentional use of *reflection-on-action* strategies led to important insights on "missed opportunities" that eventually enhanced my future mediation success. The first was an intervention with faculty in a fifteen-member academic Department at a large state university. For several years, there had been overt conflict between the more militant young faculty who wanted a significant change in the department's requirements and leadership and those referred to as the "old guard" who wanted to retain the status quo. The militant group was well-organized and active in disrupting "business as usual" to the extent that the dean of the university hired his third chair of the Department within three years, and allocated money to bring in a conflict consultant. I took on the task and had several conversations with both the new chair and the Dean. The first two meetings with the faculty went fine, and there seemed to be some new understandings among the parties and some promise of compromises and discovery of common ground. However, in the third meeting, the Dean decided he wanted to assume a more active role in the intervention. He told me he would give the opening talk at a full-day retreat commending the faculty on their voluntary involvement and progress, but also forcefully remind them that failure to reach an agreement and make things better in the future would severely limit their self-governing privileges. However, his talk failed to transmit the message of the possible consequences of non-settlement and lacked any specifics on his expectations. The "cheer-leading nature" of his talk seemed to embolden the more radical fringe members of each group. There was a decided regress of progress. Upon engaging in *reflection-on-action* after the event, I realized I had not done a well enough job to negotiate a solid, well-understood commitment from the Dean in the planning stage of his critical role in the conflict, and the necessity of his "having my back" by delivering a consistent message. It made the chances for success more much difficult. In subsequent ADR work, I certainly benefited from this insight and made sure both my clients

and I were on the same page with regard to expectations, agreement and implementation.

Another key "lost opportunity" was my role as a mediator in school contract negotiations in a medium-sized city school district. Representatives of both the teacher's union and school district had five to seven members on their negotiation team. I had experience successfully negotiating over a dozen contracts with other school districts by having most of the meetings face to face among the parties, with only occasional private visits to each of the two groups. My game plan was to follow what had worked many times before.

However, as the once a week meeting went into their second and third months, I noticed the head union negotiator (also head of the teacher's union) seemed to be doing over 90% of the talking for her group. Other team members were becoming more silent and withdrawn both emotionally and physically, especially as the union head became more strident in tone and bold in her demands. The overall effect on the negotiations was both teams retreating into fixed, polarized, and predetermined positions. I then tried to "pivot" and alter my "game-plan" and have more private meetings with each group in an attempt to both understand and maybe change the intra-team dynamics to shift what was happening at the table. By then, it was too late to undo the damage.

The insight I gained from engaging in Lang's emphasis on *reflection-on-action* from these "missed opportunities" led to several changes in my mediation approach. I consciously committed to more frequently access Bolman and Deal's political frame to diagnose group dynamics in negotiation teams during mediations, and to display courage and self-disclosure to give them direct feedback on what I was observing and feeling. A second important insight related to the political frame was to pay more attention to the critical style and preferred frame of negotiation leaders. The head of the teacher's union was a very effective leader and a strong advocate in contentious negotiations gaining valuable benefits for her group over the years. However, her overtly political orientation, appropriate for "survival of the fittest" struggles in the metaphoric jungle, was not a good fit with the stated desire of both sides to engage in more "interest-based, mutual gain negotiations" for this contract. She was much better at, and more well-versed in, so-called "street-fighting" adversarial negotiations than she was at more collaborative, problem-solving negotiations. In essence, I realized too late that although her head was in agreement to use in-

terest-based cooperative negotiations, her heart and spirit were more wired to fighting it out competitive style.

In the future, I determined to do a better job of spending time with negotiation leaders in understanding and working with their negotiation style and preferred frames, and pay more attention to intra-team dynamics, even if that meant meeting privately with the respective teams more often, recognizing that my effort away from the table might be as important as my effort at the table. I utilized this "shuttle-diplomacy" approach more in a subsequent teacher contract negotiation and worked more effectively with the head negotiator and representatives for each side. In the same negotiation, I borrowed the "unite against outside threats" concept from Bolman and Deal's political frame.[43] I reminded the parties that they had agreed to work with me in two consecutive all-day sessions, and that I agreed to make only one very expensive trip from Florida to New York to help them. This put some financial and political pressure on the parties to "commit to doing serious work and make the time and the financial investment count." I believe that my intentional utilization of multi-frame thinking and utilization of reframing in my approach was instrumental in the parties' success in agreeing to a mutually desirable four-year settlement during the two-day marathon session after they had negotiated once a week for over a year unsuccessfully.

IX. REFLECTION-IN-ACTION

There are many occasions in which I have faced unanticipated or confusing challenges in my mediation work. On these occasions, the behaviors and reactions of participants did not fit my predetermined "theories" on how the mediation process would unfold, and how to handle the situation. My usual interventions did not bring about the beneficial results they usually do. Two specific incidents come to mind. One was a workplace office conflict in which five women had issues with another female office worker's specific behaviors. I was hesitant to bring them all to a group meeting together because of concerns that the five would intimidate and overwhelm the lone respondent. The five would all support each other and amplify the strength of their grievances. However, after talking to the lone respondent, she assured me she wanted to par-

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43 BOLMAN & DEAL, *supra* note 23, at 414.

ticipate in the mediation and wanted to hear from them. I developed norms and ground rules to attempt to minimize the power differential.

Partly through the mediation, several interesting and surprising developments took place. Each of the five women on one side of the issue began to have vastly different emotional and physical reactions to the conversation. Two of them began to show tears on their faces, and one of them left the session to compose herself. It was clear they were demonstrating empathy and compassion toward the disputant on the other side and were regretful that the issue had escalated to the point that a third party had to intervene. When the absent party returned to the room, I consciously developed a new "experiment" by changing strategies, based on a new hypothesis on what was occurring. I began to focus more on "here and now" interventions that elicited feelings from each participant about what was happening in the moment instead of focusing on the past and future, which is more the norm of traditional mediation training. The new interventions shifted the mediation dynamics to a more productive state.

Another example of my many uses of multi-frame thinking and *reflection-in-action* was when I was working with the National Labor-Management Council of one of our large government agencies in negotiations over management oversight of an important call-center. I consciously used the multi-frame thinking and the reframing strategy of the Bolman and Deal book, which seemed to have a huge positive impact on the parties. The respective labor and management teams had worked all day and were not making progress on any agreements. There were numerous instances of bickering and contentious behavior between the teams, and even among the teams themselves. The negotiators seemed entrenched in their predetermined positions and were blaming each other for the lack of movement. Even more troubling was the behavior, particularly of the Union head, who was doing what he always did and did best: utilizing bullying and intimidation tactics within his team and towards the management team. I had already used my rapport building strategies from the human resource frame and had gained supposed agreements on ground rules and behavioral norms from the structural frame. However, they seemed to have only minimal impact. Remembering the quote from Bolman and Deal, "[w]hen the world seems hopelessly confusing, and nothing is working, reframing is a powerful tool for gaining clarity, regaining balance, generating new options, and finding strategies and actions that

work,"[44] I knew I needed to do something different. However, I was not sure of what to do.

Fortunately, I remembered a story that former President Jimmy Carter told about the Camp David 1978 Negotiations between the Egyptians and the Israelis over land that was acquired by Israel as a result of their military victory in 1967.[45] Carter spoke about a key moment in the negotiations that he thought was pivotal in reaching an agreement between President Anwar Sadat of Egypt and Prime Minister Menachem Begin of Israel. After several weeks and many attempts to forge an agreement, it looked like all was lost, and the parties were packing their suitcases to go home. Before their departure, Carter visited the Israeli delegation to say farewell to Begin and his associates. It so happened that Begin had requested pictures of President Carter for Begin's grandchildren. Following the suggestion of one of his young staff members, Carter had signed the pictures and placed the name of one of Begin's numerous grandchildren on each of the pictures. As Begin accepted the pictures from Carter, the Prime Minister gazed at each one and slowly spoke the name of each grandchild. As he did this, his eyes filled with tears. After composing himself, he ordered his entourage to unpack their bags and redouble their efforts to reach an agreement. According to Carter, the overall interest of negotiating an agreement that might create a better life for children and grandchildren became the overriding concern in the minds and hearts of both men. Undoubtedly, this was always an interest that motivated the negotiators to come to Camp David. However, it might have been lost or placed backstage as powerful heads of state engaged in tough, positional bargaining to win victories and satisfy egos. The pictures of grandchildren incident, however, placed the interest of a more peaceful future for children and grandchildren solidly at center stage and refocused the parties on their ultimate goals. Days later, an agreement was reached that established relative peace between the Israelis and the Egyptians for the past many years.

What does this have to do with multi-frame thinking and doing and how I conducted my interventions? At the height of tension between my federal government labor-management teams who were rooted in a destructive cycle, I told them the story I had heard

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[44] BOLMAN & DEAL, *supra* note 23, at 23.

[45] The author learned about this incident from the Camp David 1978 negotiations from a small group briefing by former President Jimmy Carter at a Conference of the Association for Conflict Resolution in the early 1990s.

from former President Carter about Camp David. After the story, I pulled out a picture of one of my daughters from my wallet and asked them to pass it around and look at it. I then told them how this daughter had been in the throes of a serious illness and was now making progress, at least partially because of the emotional and financial support from the agency they represented. I explained how this assistance had allowed our family to hire excellent medical care for our daughter that seemed to make a difference in her recovery, and how thankful our family was to the agency that made that high-quality care possible and available. The humane and compassionate assistance from folks in their agency had made a significant impact.

The story had the intended effect. As in Camp David, the intervention seemed to refocus the parties on why they were negotiating (their ultimate interest in serving the public at a time of critical need), who would benefit by their possible cooperation, and who would lose by their in-fighting. Just as in Camp David, the parties did not discuss the story, but the union head, followed by the management team, immediately vowed to redouble their efforts to "work together and get it done." The parties labored well into the night to come up with more "agreeable proposals" that culminated in more fruitful dialogue and important agreements the next day.

X.   INTEGRATING "ANCHORS" AND "SIGN-POSTS"

I hope I have made a case that the insights, models, and values from each of these books and articles I have discussed have been instrumental in enriching both the understanding and effectiveness of my mediation and ADR practice. In particular, the flexible cognitive disposition and strategies advocated by Bolman and Deal have enhanced my ability and willingness to use all four frames and reframe when necessary to enlarge my comprehension of the many nuances of disputes and expanded my intervention options. The *Wisdom of Solomon* material reminds me continually of the core values or virtues underlying the theory and practice of conflict resolution work. Donald Schön's pioneering work in *The Reflective Practitioner* reinforces my belief in mediation as a professional practice. It helps me comprehend what I am doing and explain what I do to my critics and admirers. Michael Lang's work on *Reflective Practice in Conflict Resolution* builds and expands on

Schön's description of reflective practice and sheds new, radiant light on the methods and value of this approach. The cumulative effect of these insights and "anchors" has provided significant assistance to me in addressing difficult situations that can easily occur in mediation and other forms of conflict intervention, realizing that each encounter will bring some unanticipated challenges. As Poitras and Raines concluded in their book on *Expert Mediators*, "the defining characteristic of an expert mediator is that he or she thoughtfully chooses between styles and strategies as needed to address the challenges arising from individual mediations and for every unique individual met in mediation."[46]

Nevertheless, as much as I appreciate the value I have gained from the many insights contained in these writings and how they have served as important "anchors" and "signposts" to help me move beyond the essential "tools of the trade" for my work, it is perhaps wise to remember that the subtitle of Bolman and Deal's book, *Reframing Organizations*, has "artistry" in the subtitle. Artists spin their craft and interpret experience in new ways to explore and pursue unimagined possibilities. Expert mediators and ADR practitioners rely on a rich mixture and accumulation of lifetime experiences, values, and personal characteristics that afford them the knowledge, skills, and wisdom to bring to life the "magic" of successful conflict resolution work. Their form of artistry potentially transforms how participants view their disputes, and how they interpret the experience and actions of others and themselves. In this essay, I have promoted the view that mediators' education and training can be enhanced by instituting useful concepts, strategies, and values to serve as "anchors" and "signposts" to supplement the "tools of the trade" approach of mediation practice, and I have shared some of mine to support my case. Nevertheless, I think mediators and ADR practitioners would agree that the animating force or "soul" of our conflict intervention efforts remains somewhat mysterious and elusive. Like art, it has to be experienced to even begin to be understood and truly appreciated.

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[46] POITRAS & RAINES, *supra* note 3, at 156.