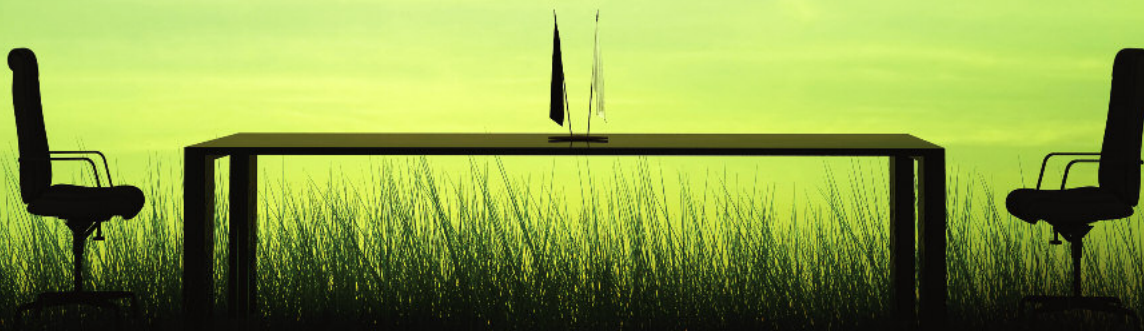


Mediation in 2030: Twenty predictions



Mediation and peacemaking is a growth field,
and the future has already arrived

“Never make predictions, especially about the future”

— **Casey Stengel**
Baseball Hall of Fame Manager



Mosten

By **Forrest S. Mosten**

Futurists have already begun violating Casey Stengel’s admonition and offer the following predictions to be reality in 2030 as reported by Christian Nesheim:

- Ear implants will be available to instantly translate foreign language into one’s native language;
- Life expectancies up to 150 years will not be uncommon;
- Poverty, which affects 25 percent of the world’s population today, will be reduced to two percent;
- A significant portion of the world’s food will be grown on farms located on the roofs of skyscrapers;
- Tours of destinations in outer space will be popular vacation venues;
- China will have 250 cities, each with populations over 1,000,000 people;
- Sex robots will be readily available and widely used by both sexes.

If, as Eleanor Roosevelt said, “The future belongs to those who believe in the beauty of their dreams,” we in the mediation community have much to look forward to.

In 1979, I opened my private mediation practice in a storefront on Sepulveda Boulevard near LAX, between a pet store and the Loyola movie theatre. I had resigned from my position as FTC Assistant Regional Director for Consumer Protection and invested the proceeds of my house sale to follow my dream of making my living through mediation. Most of the calls I received that first year were for “meditation” or “medication” and I billed a total of 90 hours for mediation. It took seven years for me to finally match my mediation revenue with my expenses. The good news is that since 1986, my life’s work of peacemaking has provided a comfortable living and has been a continued source of personal fulfillment.

In 2001, 15 years after my first year in the black, my book *Mediation Career Guide* (Jossey Bass, 2001) was published, with the following introduction:

“I have always been a dreamer. Some dreams come true. As mediators, we

help people, and what we do makes a difference to the people whom we touch and to many whom we will never see.”

A decade later I am still dreaming about the future of peacemaking. The following are some of my own predictions of the trends in mediation that will shape the field in 2030.

#1: Call a mediator instead of a lawyer

When people have conflict or legal angina, the first call will be to a mediator or collaborative lawyer

Being a rights-based and competitive society, both the public and the legal profession have encouraged the expanded use of lawyers to remedy and redress problems and damages. Historically, when in conflict, people generally have made their first call to a lawyer with the expectation of having the justice system vindicate the situation. The consequence of this custom has been to create lawyer domination of disputes, often in legalistic and narrow approach to resolving those disputes. The explosive growth of mediation shows that the public, when aware, will often choose a non-adversarial

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option and will likely receive better results in the end.

With consumer use of mediation the first call of a person in legal trouble will more often be to a mediator. With over a half century of mediation practice, mediators will have earned the respect and confidence of the public so that it will be a top process choice of both consumers and recommending professionals.

#2: Mediation in everyday life

It will no longer be considered strange to think of mediators as serving some of the needs that village elders served in days long ago (David Hoffman, "Future of ADR Practice," *Negotiation Journal* (2006))

The use of mediators and consensual conflict resolution will be available for every aspect of a citizen's life: In families, workplace, the homeowner's association, schools (peer mediation), neighborhood groups, elder care, and in conflicts between heirs following one's death.

#3: Mediation licensure

Mediators will be licensed as a separate profession. Such licensure will be required to hold oneself out publicly as a mediator, to provide services in public and private settings, and all licensed mediators shall be subject to regulation as to quality control, professional discipline, and other rights and obligations of a licensed mediator.

#4: Training and supervised experience

In order to be granted a license, all mediators will be required to complete a minimum of 200 hours of classroom training by certified teachers and a minimum of 100 hours of supervised mediation services rendered to court litigants and non-profit institutions.

#5: Required court mediation

Absent emergency, all courts will require completion of a minimum of six hours of mediation prior to being granted courtroom resources for a contested hearing or trial. Such mediation will be paid by the parties. In such cases in which the litigants financially qualify for

subsidized assistance, the court will pay for the mediation services. In addition to required mediation, there shall be other incentives to mediate, such as priority on the court docket for a contested hearing if parties do not resolve all issues in mediation and require a court hearing or award of attorney fees for parties that attend mediation at an early stage and against parties that unreasonably resist or delay mediation.

#6: Early-stage triage

All courts will have a triage intake system in which parties can select the process most appropriate for their own situation prior to being eligible to be assigned to a judicial officer to render a decision (Credited to Professor Frank Sander's Open Door Courthouse developed in 1976). Private practitioners will have similar intake processes providing information to prospective clients so that informed consent on process options becomes a reality.

#7: Mediation friendly courthouses

Courthouses will be redesigned so that there will be 10 times as many settlement rooms as courtrooms for contested cases. Other design changes will include mandatory child care, evening and weekend hours, accessible and low-cost computers and duplication equipment, state of the art films and materials to provide orientation and assistance, court staff who will be designated consumer representatives to proactively assist court users, and elder volunteer docents who will supplement court staff services, provide transportation to and from court, and bake cookies and other sustenance for court users.

#8: Mediation training for judges

All judicial officers and court staff will be required to complete a minimum of 50 hours of classroom training in mediation and must have a minimum of 25 hours of supervised mediation services rendered to court litigants and non-profit institutions.

#9: Judicial support for mediation

Prior to initiating any court action or filing a response to such action, each liti-

gant must certify that he/she has read and understood a letter from the court's presiding judge modeled after the letter currently in use in the Family Law Division of the Los Angeles Superior Court drafted by Judge Aviva Bobb.

#10: Interdisciplinary approaches encouraged

Interdisciplinary mediation teams and businesses will be encouraged, and ethical restrictions about mediators who are licensed lawyers sharing fees with non-lawyers will be eliminated.

#11: Absolute mediation confidentiality

All mediation communications will be absolutely confidential and current practices of requiring mediators in family law to provide recommendations to the court (Family Code § 3182) will long have been eliminated in keeping with *Cassell v. Superior Court* (2011) 51 Cal.4th 113, and *Foxgate Homeowners' Assn. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1.

#12: Technology and mediation

Video conferencing, Skype, social media, internet services and other technological innovations will change mediation delivery services (See, Colin Rule, *Online Dispute Resolution for Business* (Jossey Bass, 2002) and Stanford's Center for Internet and Society <http://cyberlaw.stanford.edu/>)

#13: Neuroscience and mediation

Neuroscience research shall be required training curriculum for licensed mediators and such research will change best practices in unforeseen ways. In mediation conferences and trainings, the translation of neuroscience research for mediators will evolve to proven strategies to account for SCARF (status, connection, autonomy, relationships, and fairness) understanding that mediators use the "neo-mammalian portion of the brain that governs planning and thought when parties use the more reptilian portion of the brain focusing on the emotional aspects of the basic needs of survival. The

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research points that mediators need to systematically minimize perceptions of danger and maximize perception of reward during mediation (See Francois Bogacz-Convirgente and Jeremy Lack, "The Social Brain During Mediation: A Tentative Model http://westallen.typepad.com/brains_on_purpose/2010/06/some-slides-on-the-neuroscience-of-.html)

By 2030, further work in the field will integrate these findings to train mediators to form nuanced interventions to take advantage of this knowledge.

#14: Conflict resolution education starting in preschool

Mediation and conflict resolution education and training will start in preschool and be part of learning curriculum for public and private education on all levels. Interdisciplinary Conflict Resolution and Peacemaking courses will be standard undergraduate curriculum and Majors and Minors in this field will be commonplace. These concepts and skills will be part of all professional, post-graduate programs.

#15: Conflict resolution in the workplace

Job training will include conflict resolution training; employees in government, private businesses, and non-profit institutions will be required to complete relevant conflict resolution training as part of their initial and ongoing job training.

#16: Growth of dispute resolution systems design

All governmental entities, private companies, and non-profit institutions will have internal dispute resolution systems design and prevention departments to handle conflicts in the workplace, with consumers, and other entities. Attorney General Janet Reno's efforts in the Justice Department to have Alternative Dispute Resolution replace litigation by the Federal Government will be restored and expanded in ways she might never have imagined.

#17: National Institute for Conflict Wellness

There will be a National Institute for Conflict Wellness modeled after the current National Institute of Health in Bethesda Maryland. This institute will have divisions for studying conflict in the U.S. and quantifying its impact and financial cost, as well as successful and potentially replicable models in the public and private sectors to resolve and prevent such conflict. The institute will routinely study, consult experts and conferences and publish materials on conflict resolution. The Institute will fund and monitor pilot programs to deliver conflict resolution and preventive services in symptomatic and asymptomatic situations.

#18: Department of Domestic Conflict Resolution

Congress will have passed a version of the Kucinich bill (See HR 808 introduced by Representative Kucinich and National Peace Academy (www.national-academy.us) establishing a US Department of Domestic Conflict Resolution and Prevention to monitor use of consensual and healing processes for all claims and disputes involving the federal government.

#19: National Peace Museum

Building on the work of the US Institute for Peace (www.usip.org) and the New York Peace Institute (www.NYPEACE.org), there will be a National Peace Museum to offer exhibitions (both live and on-line) profiling peacemakers on every level and peace-making efforts in all walks of life. The museum will also have interactive exhibits to teach museum-goers about how to utilize conflict resolution and prevention in their own lives, in their education and workplaces, and in their communities.

#20: Government will promote mediation on every level

Using the groundbreaking developments led by Justice Robert M. Bell in Maryland as a template (<http://www.conflict-resolution.org/>

sitebody/education/lecture_series/Bell.htm), other states and cities will utilize public funding to promote mediation on television, radio, and in the print media, designation of mediation days, and other activities to imprint consensual decision making in the lives of its citizens.

Conclusion

Many of the predictions in this article are already alive and active in society and others will develop in the years ahead. Mediation and peacemaking is a growth field and in addition to training practitioners, I predict that graduate programs in Dispute Resolution and Prevention will develop courses and advanced specialization in strategic planning for the field modeled after the work of Professor Lawrence Susskind of Harvard (See Consensus Building Institute, Inc. (www.cbuilding.org)).

Business icon, Peter Drucker has stated: "The best way to predict the future is to create it." Mediators and other practicing peacemakers are creating concepts, data, and much of our efforts on a daily basis will contribute to the reality of the predictions set forth in this article and by others involved in this important work.

[Ed. Note: This article is based on the author's keynote address delivered at the 2011 Annual Meeting of the Southern California Mediation Association, November 4, 2011, Pepperdine School of Law, Malibu, California]

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