


Defining Inclusive mediation: Theory, practice, and research

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Abstract

The Inclusive approach to mediation was created in Maryland in the 1990s to bring the radical inclusion already deeply woven into the community mediation movement to the mediation table as a core belief and practice. Community mediation includes all places (neighborhoods where the dispute occurred), times (convenient to the participants), problems (even if illegal), and people (not just those on a court filing) involved in the conflict. In Inclusive mediation, this inclusivity is applied in the mediation process, welcoming all ideas without filtering or changing them, and working with all types of expression without designing or enforcing communication guidelines.

1 | INTRODUCTION

The philosophy and craft of the Inclusive mediation approach are defined here, as practiced since 1995 in several jurisdictions and programs of the state of Maryland and elsewhere, including its theoretical roots, research base, defining qualities, core skills, and history.

2 | WHY DEFINE MEDIATION APPROACHES?

Motivated by a belief in mediation consumers' rights to understand the service they are being promised, and by the need to engage tailored evaluation and training, mediation leaders have been calling for better definition of mediators' practice approaches or styles for over 25 years (Bush, 2004; Charkoudian, 2012; Charkoudian, de Ritis, Buck, & Wilson, 2009; Della Noce, 2012; Golann, 2000; Pruitt, 2012; Riskin, 1996; Welton, Pruitt, & McGillicuddy, 1988). In the context of advocacy for more reliably high-quality services across the alternative dispute

resolution field, Bush (2004) and other leaders in transformative mediation (see Bingham, 2012; Della Noce, 2012) have called for evaluating mediators within their own style framework, ensuring that mediators are not judged based on use of skills they do not support, and that the field as a whole is strengthened by a diversity of practice styles.

Practitioners and scholars have worked to categorize the breadth and intricacies of mediator styles along useful continua, including: facilitative-evaluative, crossed with narrow-broad interests (Riskin, 1994); change-outcome orientations (Kauffman & Davis, 1998); and relational-settlement focus (Kressel, Henderson, Reich, & Cohen, 2012). Further complicating the picture, actual skills and tactics used by mediators are sometimes different from their stated approach (Charkoudian et al., 2009), with an overview of 27 civil court programs showing that facilitative mediators “evaluated the strengths and weaknesses of each side’s case, suggested settlement options, predicted the outcome, or assessed or recommended the settlement value of the case” in up to three fourths of cases reviewed (Wissler, 2004, p. 64). In addition, mediators debate whether practitioners can or should commit to a single unified approach or style. Some have asserted that approach is context- and organization-dependent (Golann, 2000); can change across the life of a single case (Golann, 2000; Pruitt, 2012); and contains behaviors so disputed by practitioners that it cannot sustain the false coherence and import placed upon it (Della Noce, 2012).

According to the classic definitions like Riskin’s, Inclusive mediation is more facilitative than evaluative, and Inclusive trainers teach a unified philosophy, discouraging an eclectic practice that changes by case or stage of case. This description of the growing Inclusive mediation approach is offered with gratitude to those who have built the traditions from which it grows, knowing the benefits of clear definitions to consumers and practitioners, and mindful of the particular challenges in clarifying the nuanced and complex practices like mediation.

3 | THEORETICAL ROOTS OF INCLUSIVE MEDIATION

Like the alternative dispute resolution movement generally, Inclusive mediation is rooted in conflict theory. As envisioned in the 1940s, 50s and 60s by Lewin (1947), Deutsch (1949), Coser (1964) and Adams (1966) conflict theory held, variously, that conflict was itself a neutral force, which could cause positive (e.g., social change, in the tradition of Marx and Hegel) or negative (e.g., violence) results, through cooperation or competition. By the early 70s, Scanzoni (1972), Sprey (1974) and others were applying this concept to family life, that conflict in families can be a positive element, if directed toward positive change and people getting their needs met, not toward violence and division. From conflict theory, conflict resolution program theories and practitioners have taken as central the project of separating conflict from conflict tactics, and people from the problem to be solved (Fisher, Ury, & Patton, 1981; Schellenberg, 1996).

Like the community mediation movement generally, Inclusive mediation has its roots in principles of community justice, where conflict belongs to the people and communities involved, not to an impersonal state. This model held that community members should identify and bring conflicts to light, not bury them in bureaucracies. Police, courts and corrections were not being overburdened, they were being misused to handle many issues that were between neighbors, coworkers, family members. Victims were erased in this system, both as actors, and as recipients of restitution, as in ancient systems of justice. Out of these ideas, came two theories and practices: the restorative justice movement (Bazemore, 2001; Umbreit, Coates, & Vos, 2004; Zehr, 1990, and many others) and the neighborhood/community justice or community

dispute resolution movement (Auerbach, 1983; Clear & Karp, 1999; Tomasic & Feeley, 1982). Shonholtz (1984) and others shaped community justice theories through the community mediation movement, where self-determined communities are empowered to resolve their own disputes through conflict resolution sessions facilitated by community members (Wahrhaftig, 2004). McKnight (1995) is also aligned with this program theory, with his focus on broadening self-determination theory (Deci, 1976) to communities, with members helping each other outside the reach of state justice and helping institutions.

Community mediation and the Inclusive mediation model are also closely aligned with theories of collective efficacy and neighborhood cohesion as protective factors against crime and blight. From social disorganization theories of crime (Shaw & McKay, 1942), sociologists (Sampson & Laub, 1995) and others have linked crime reduction to the unity and collective power of neighborhoods. The related program theory of collective efficacy holds that neighborhoods with strong ties between neighbors and to outside resources are powerful enough to prevent violence and work things out directly (Bellair, 1997; Sampson, 2006; Warner & Rountree, 1997). Some community-based conflict resolution interventions are drawn from these theoretical roots (see Charkoudian & Flower, 2009; Ohmer, 2016). Out of the community mediation movement's roots in conflict theory, community justice theory, and collective efficacy theory, the development of Inclusive mediation has been a process of bringing these core values to the mediation table through adjustments to mediation process and mediator skills.

4 | COMMUNITY MEDIATION VALUES

The practice of Inclusive mediation is deeply rooted in community mediation structures and values. In many ways the macro-level core values of the community mediation delivery system are borne out on the micro-level at the mediation table through Inclusive mediation (see Figure 1). Those values have long included a radical inclusion of any person, place, time, or problem.

The 10-point model of community mediation in Maryland (MACRO, 2019) defines community mediation as inclusive of all people: anyone (teenagers, plumbers, priests, professors) can be a mediator with sufficient skill-based training, and anyone can be a mediation participant, with each group reflecting the diversity of the surrounding community. With all services offered free of charge all people are included regardless of ability pay. Any place is included, with mediations happening in numerous locations in the community, such as houses of worship, libraries, community centers, and mediation scheduled at a location convenient to participants, if possible in the neighborhood where the dispute occurred. Community mediation in Maryland is also defined by including all problems. Mediation is offered for complex community disputes, simple misunderstandings between businesses, or longstanding multi-party family feuds. Even conflicts involving serious crimes are acceptable in mediation, so long as the participants feel they can represent their own needs without fear of retaliation. Finally, community mediation values have been defined in Maryland and elsewhere as inclusive of any timing. For example, mediation can happen at the convenience of the participants, including nights and weekends. In addition, it is never too early for mediation, with the process applied successfully to conflict prevention through planning and facilitated "difficult conversations" not yet defined as conflicts. And, it is never too late, with mediation offered even after multi-year court battles or long incarceration.

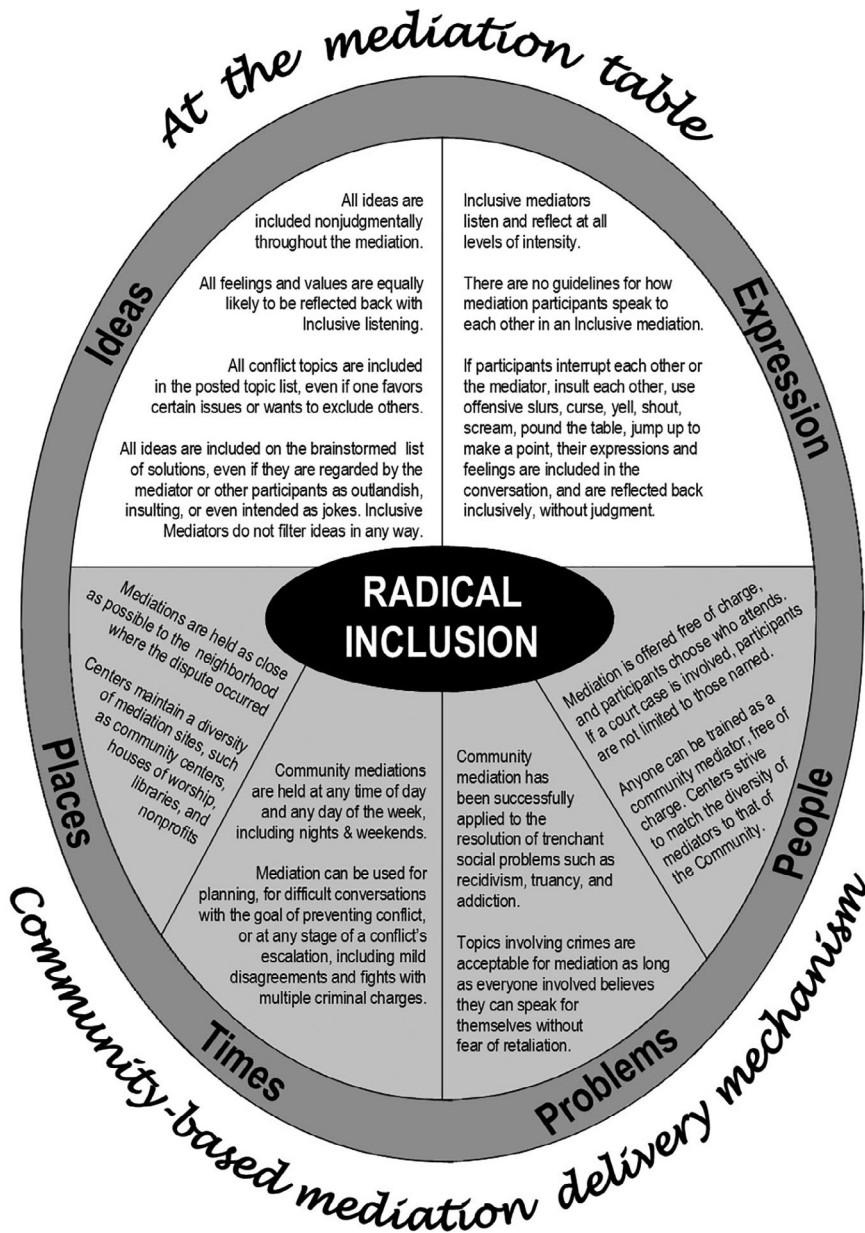


FIGURE 1 Inclusive mediation

5 | RESEARCH ON INCLUSIVE MEDIATION OUTCOMES

Research on outcomes for Inclusive mediation participants indicate that the service is effective at reducing use of the police, courts, and correctional services. Police-referred Inclusive mediation was associated with reduction in intensity of calls for police service (reduction by 8.5 calls per 6 months), saving police four and a half hours of patrol time per successfully mediated case (Charkoudian, 2005). In another study of Inclusive mediation referred by the state's attorneys in two comparison counties, those receiving inclusive mediation were nearly five times less

likely to return to criminal court in the following year than those whose cases were not mediated (Maryland Judiciary Court Operations, 2016). Further studies have shown that when Inclusive mediators have delivered prisoner re-entry mediation in correctional facilities, the predicted probability of re-arrest is reduced by 13%, and another 8% for each subsequent session (Flower, 2014). When asked about a partnership with community mediation center operating in the inclusive model, prosecutors perceived the program as an “effective alternative to prosecution” (87.1%), with the potential to reduce cases sent to trial (92.7%) (Polkinghorne, LaChance, & Hopson, 2010).

Several other studies have explored mediation outcomes for participants in mediation facilitated in multiple models, with Inclusive mediators forming a minority of the sample (11–37%). In civil small claims day of trial cases, mediation led to perceptions of improved relationships, greater empowerment, increases in satisfaction with the judiciary, and decreased likelihood of returning to court within the year (Charkoudian, Eisenberg, & Walter, 2017; Maryland Judiciary Court Operations, 2015a). Further, small claims cases in which mediators used more eliciting strategies (brainstorming, open-ended questions), and in which mediators spent less time in caucus were associated with a lower chance of returning to court (Charkoudian et al., 2017; Maryland Judiciary Court Operations, 2015a). Similarly, in family court custody and visitation cases, mediators reflecting what participants are saying (with a focus on their emotions, interests, and clarification of topics) and mediators asking participants what they think the solutions should be, are consistently positively related to outcomes that indicate a greater ability for parents to work together (Charkoudian, Walter, & Eisenberg, 2018; Maryland Judiciary Court Operations, 2015b). An earlier multi-state quasi-experimental comparison study with a large percentage of Inclusive mediators showed that mediation significantly reduced further reliance on police and courts, even when holding constant for a host of control variables like income, race, and attitudes toward conflict, and accounting statistically for selection bias (Charkoudian, 2010).

6 | PRACTICE OF INCLUSIVE MEDIATION

Inclusive mediation holds that including all participants' ideas and experiences, in whatever messy, real form they take, and working on understanding those ideas and experiences in a deeper way, has the best chance of building a lasting resolution to conflict. Mediators practice radical inclusion (see Figure 1) of all ideas and forms of expression. In listening to stories about the past, this means mediators do not establish any communication guidelines, creating space for insults, screaming and cursing to occur, if needed. Inclusive mediators will hear cutting insults and reflect back the emotion and fury in it, but also the positive value that is not being fulfilled for that person. In brainstorming about solutions in the future, radical inclusion means that all ideas, the soberly considered, the outlandish, and the insulting, are given equal attention by the mediators, without filtering or editing. Illegal ideas and plans are also treated without judgment by Inclusive mediators. Child abuse, abuse of a vulnerable adult, and credible threat of future bodily harm are exceptions to confidentiality, and Inclusive mediators are scanning for whether participants feel they can meet without fear of retaliation, but beyond those ethical boundaries, illegal ideas are not excluded from Inclusive mediations. This is critical to the effort to uphold participant self-determination, and to the overall effort to apply mediation to resolve social problems such as violence, since the most dangerous conflicts that need peace may have some illegal aspects. Inclusive mediators are radically accepting of participants, greeting them exactly where they are, and doing all they can to build understanding at the table.

It is critical to note that several of the qualities (e.g., co-mediation), processes (i.e., five steps including listening and brainstorming), and core skills (e.g., eye sweep, withholding opinions) have been practiced by facilitative mediators over time. Facilitative and Inclusive (as well as Transformative and Evaluative) mediators in Maryland worked together on a publication to self-define their frameworks and wrote:

Facilitative Mediation Framework: The goal of facilitative mediation is to support the participants in conversing constructively and reaching a solution acceptable and satisfactory to all. In facilitative mediation, the mediator helps people in a dispute to communicate with one another, to understand each other, and if it is possible and desired, to reach satisfactory agreements. Facilitative mediators would use listening, reflecting, reframing, and summarizing [techniques], with minimal providing information, making suggestions, or persuading.

Inclusive Mediation Framework: The goal of inclusive mediation is to support the participants in having difficult conversations and to guide a problem solving process to develop solutions that meet everyone's needs, with all content decisions made by the participants. ...Inclusive mediators would use listening, reflecting, and some summarizing [techniques], and do not use reframing, providing information, making suggestions, or persuading strategies. (MACRO, 2010)

To further define Inclusive mediation, what follows is a clear description of what Inclusive mediators do, as a rule. While much of this has evolved from facilitative practice, significant changes have been made such that Inclusive mediation can be considered a distinct approach.

Inclusive mediators are devoted to the use of joint session in mediation, and many have never used a private session, or caucus in two decades of practice. First, because communication and understanding are the core values of Inclusive mediation, it is only natural that Inclusive mediators would protect joint session as the norm. Inclusive mediators avoid reinforcing the notion that difficult, messy direct communication has become hopeless. Second, secrets and side conversations, and all the anxiety and bitterness they can engender, were often characteristics of the interpersonal conflicts being mediated. To reproduce them in the mediation session may take mediation participants back into the past, and the triangular communication that characterized their dispute. Third, private sessions, and the confidentiality offered as they begin, can bring out new information that mediators may not share in the joint session (some of which might create an ethical quandary for a mediator). Again, this is antithetical to the values of mediation, where information is mutualized for all, so that participants can clear the air and make well-informed plans for the future. Finally, when information is shared in private session, the mediator then has the power and responsibility to interpret the information, determine whether it should influence the direction the mediation takes, and decide what is shared back in the joint session, all of which should be choices made by participants in mediation.

Co-mediation is another defining practice of Inclusive mediators, for a number of philosophical and practical reasons. First, if mediators are being radically inclusive of all participants, ideas, and all types of communication, and foregoing communication guidelines, two mediators are needed to hear all views, keep pace, and capture all topics to be resolved. Second, in the solutions stage, all ideas are written on the board in real time, with no editing or filtering by mediators (as described below in greater detail). Depending on the nature of the ideas, number of participants, and level of adversarial thinking that still remains at the table, ideas may

come very quickly, and two mediators are needed to catch all of them. Third, Inclusive mediation is happening in a community mediation setting where demographic matching of mediators and participants is known to be effective and is a major priority. Matching the race of the mediator and participant, for example, has been shown to increase participants' perception that mediators listened without judgment, and their sense of control of the conflict (Charkoudian & Wayne, 2010); as well as positive case outcomes in court-referred mediation (Charkoudian et al., 2017; Charkoudian et al., 2018; Maryland Judiciary Court Operations, 2015a; Maryland Judiciary Court Operations, 2015b). Co-mediation allows for this to occur to a much greater degree. Fourth, co-mediation is essential to the practice of Inclusive mediation because it provides a framework for continuous improvement and quality control in this high-demand, high-skill practice. Inclusive mediators in Maryland have designed a system of mutual support, structured feedback, basic training, apprenticeship, in-service training, advanced training, performance-based evaluation, and more to develop excellence. Most critical in that list is the 30 min of structured feedback that all Inclusive mediators give each other after every mediation session, only possible due to co-mediation. Finally, co-mediation allows mediators to model collaboration and facilitate transparently, increasing the capacity-building potential of mediation, so that its mediation table strategies can be used later at the kitchen table.

Inclusive mediation meets the Model Standards for Mediator Conduct (ABA, AAA, & ACR, 2005) in its commitment to self-determined (Standard I), impartial (Standard II), confidential (Standard V), high-quality (Standard VI) service. The details of the process, as well as the skills used and rejected by Inclusive mediators are explained below and in Table 1.

7 | INCLUSIVE MEDIATION PROCESS

Inclusive mediators use a five-step mediation model, which is usually followed in a linear fashion, although there is always enough flexibility to return to earlier steps for further work in a certain area that was missed. After explaining the process, mediators listen and ask questions, then list topics for resolution, and facilitate a brainstorm where participants develop solutions, which mediators can write into an agreement.

7.1 | Explaining mediation

An Inclusive mediation session's explanation is similar to that of any mediation, including: introductions; a statement about the core values of mediation, (nonjudgment, confidentiality, and voluntariness); a description of the five-step mediation process (Explaining Mediation, Listening, Listing Topics, Developing Solutions, and Agreement Writing); a review of housekeeping details; and giving consent by signing a detailed consent form outlining the above. The commitment to confidentiality excepts cases of child abuse, abuse of a vulnerable adult, and credible threats to do bodily harm. It does not make exception for other planned future crimes, or admissions of any past crimes or illegal or immoral activity. No communication guidelines are presented.

7.2 | Listening

The listening step of the mediation, stage two, begins with a process-mapping statement like "now we'll start the listening stage, and we may check in on what we've heard or ask questions

TABLE 1 Inclusive mediation: skills embraced and rejected

Skills embraced	
Inclusive listening	<ul style="list-style-type: none"> • Reflecting back feelings, values, and topics. • Ex: <i>Participant</i>: “Pete’s a damn liar, and he lied about the property line to the contractor, and put up a fence cutting five feet off my yard. Take it down, Pete!” <i>Mediator</i>: “It sounds like you feel deceived, and you are looking for solutions around the fence that are fair and honest.”
Open-ended questions	<ul style="list-style-type: none"> • Ask broad questions to maximize or mutualize information. • Ex: “What used to happen in the neighborhood before the changes you described?” or “when you say ‘a sensitive child’, what do you mean?”
Win-win knitting	<ul style="list-style-type: none"> • Using both participants’ values or feelings to prompt, craft, or test their solutions. • Ex: “Earlier, spring, you mentioned you are looking for predictability, and Stephanie, you mentioned you were looking for spontaneity. What ideas about the schedule could get you both predictability and spontaneity?”
Process-mapping	<ul style="list-style-type: none"> • Beginning mediation and each of its stages with a snapshot of the steps of the process, to support transparency • If a participant starts focusing intensely on developing solutions in the early stage, reflect then remind participants that in a later stage they will have a chance to explore a range of solutions
Eye sweep	<ul style="list-style-type: none"> • Slowly moving brief eye contact back and forth between all mediation participants.
Common ground	<ul style="list-style-type: none"> • Weaving reflections of genuine common ground in with reflections of opposing values or feelings. • Ex: “I think I hear that tom, you felt blindsided when you saw the invoices, and crystal, you have been feeling burdened with managing the finances, and it sounds like you both feel overwhelmed with the medical debt and are looking for ways to get back a sense of control over your finances.”
Facilitation triangle	<ul style="list-style-type: none"> • Bring mediation participants into conversation with each other. • Ex: After P1 has no reaction to a big revelation by P2, reflect fully to P2, then say to P1 “what do you think about that?”
Comfort with silence	<ul style="list-style-type: none"> • Leaving a stretch of silence during open brainstorming, or while participant is thinking.
Transparent co-facilitation	<ul style="list-style-type: none"> • Discussing transitions or decisions openly in front of the participants, to model collaboration.
Skills rejected	
Positional reflections	<ul style="list-style-type: none"> • Repeating back a summary of what participants said. • Ex: <i>Participant</i>: “Pete’s a damn liar, and he lied about the property line to the contractor, and put up a fence cutting five feet off my yard. Take it down, Pete!” <i>Mediator</i>: “I think I’m hearing that you think you were lied to about the property line, and want the fence to be taken down.”

(Continues)

TABLE 1 (Continued)

Skills rejected	
Guideline-setting and enforcement	<ul style="list-style-type: none"> • Setting ground rules for how participants speak to each other or interact, including rules like one person speaking at a time, showing respect, keeping voices down, or avoiding cursing.
Assessment, analysis, or evaluation	<ul style="list-style-type: none"> • Evaluating participants' ideas or suggestions. • Ex: "I not sure a shared schedule like that is good for teen-agers." • Incorporating analysis of a participant's feelings or values into a reflection. • Ex: "So, because you were embarrassed you lashed out?"
Sharing opinions	<ul style="list-style-type: none"> • Favoring or down-playing one participant's ideas, judging negatively or appreciating participants' thoughts or stories, joining statements, or normalizing statements.
Translating for participants	<ul style="list-style-type: none"> • Explaining one participant's views to the other. • Ex: "John, I think Petra is feeling cheated by the new rent amount."
Suggestions	<ul style="list-style-type: none"> • Floating ideas about how a certain topic might be resolved, including tacking extra ideas onto a cluster of similar ideas, pointing out extra steps that are needed in a plan, or that are required by law or certain rules
Suggestion-questions	<ul style="list-style-type: none"> • Making a suggestion in the form of a question • Ex: "Have you thought about having a surveyor come and mark the property lines?"
Caucus	<ul style="list-style-type: none"> • Meeting in a private session with participants, to gather information or explore positions or solutions

for clarification." Inclusive mediators launch the listening step by asking the participants together "what would you like to discuss in mediation today?" followed by an "eye sweep." This lets participants know that it is their decision who begins talking, or how many people talk at the same time. After the first participant speaks, one mediator will say a simple "thank you, in a moment we'll check in to make sure we understand, and first we want to hear from everyone" to that participant and invite the next participant to speak. After both have spoken, one co-mediator (identified collaboratively before the mediation), gives a full Inclusive listening reflection to all participants, in the order that they spoke, reflecting back feelings and values shared, in the context of the conflict topic they were talking about (and this skill is described in detail below). The other mediator reflects other pieces the first one missed, possibly at the invitation of the first mediator.

From this point on, both co-mediators use Inclusive listening to reflect back feelings, values and topics whenever useful in building understanding, and ask strategic open-ended questions to gain clarity. Pacing and flow of conversation during the listening stage are important. When mediation participants interrupt each other, or interrupt the mediators, shout, curse, or scream, an Inclusive mediator will strive to be unflappable, and keep listening, keep reflecting, keep asking questions. As they enter into the participants' conversation, mediators are careful not to interrupt, or dampen down the energy of the conversation with too-frequent, ill-timed, or off-topic reflections and questions. The end of step two is near when mediators feel they understand all participants' opposing values on each conflict topic. Inclusive co-mediators will generally check in with participants and with each other transparently about the transition out of stage two.

7.3 | Listing topics

After a process-mapping statement, mediators frame the topics to be resolved using the values and feelings participants expressed earlier, then list the identified topics publicly on the board (usually markers on a flipchart). Topics in Inclusive mediation are single word, tangible items such as car, housing, groceries, homework, or drugs; or concepts, such as communication, health care, decision-making, division of labor. They can be strategically grouped (e.g., “housework”) or broken down (e.g., “dishes, cleaning, trash, laundry, yardwork”) based on: how the ideas are linked; how central they are to the conflict; how trenchant the conflict has been in the past around the topic; whether the smaller or larger frames are more likely to create a win-lose battle; and whether it would be difficult to work on them separately. Topics also need to be worded carefully so as not to show bias toward one participant. If both roommates have been debating about the timing and quality of chores, then “chores” may be the unbiased topic to list. However, if one roommate is advocating for a chore chart system for cleaning the apartment, and the other wants to hire a friend to do the cleaning, then “housekeeping” is the unbiased topic. In that case, listing the topics of either “chores” or “cleaner” would jeopardize the mediator’s neutrality.

Mediators frame each topic in advance to assure that they are the most strategic conflict issues that will resolve the dispute, and to mutualize ownership of each topic. Framing the topic of “homework” in a parent-teen mediation might sound like: “earlier, Steffie, you talked about feeling pressured and stressed about homework, and looking for more freedom in how homework gets done, and Donna, you mentioned feeling blindsided by homework assignments, and looking for more sharing and predictability in expectations for homework help, is that right? So, is ‘homework’ a topic you’d like to make a plan about in mediation?” If the participants agree, the item is listed up on the board.

Often a mediation participant will suggest one of their values as a topic for the board, such as “respect.” Usually, the mediator will reflect back that value as linked to any and all topics it applies to (“what I think I have heard from you, Bob, is that respect is important to you in your communication, as well as when it comes to housework, the schedule, and transportation, does that sound right?”), then stay focused on listing concrete topics to be resolved. Respect will then be used as a value against which potential solutions are evaluated: “so what would it look like to be respected around transportation, Jane?”

7.4 | Developing solutions

Participants develop solutions together during Step 4, which is comprised of four parts: an open brainstorm, picking, adjusting, and getting details. Mediators begin by making a process-mapping statement which defines the term brainstorming, encourages creativity, and declares that all ideas will be listed before evaluating begins. Topics are taken one at a time, with all four parts complete for one topic before moving on to the next.

One mediator stays at the board the entire time during an open brainstorm, quickly writing every idea up as an active voice, present tense option, beginning with a participant’s name: “Keisha takes the trash out on Tuesday nights” rather than “trash goes out Tuesdays.” If one participant tries to nix an idea at the outset, the mediator explains that they will evaluate everything shortly after all the ideas are on the board. Through the open brainstorm, the mediator prompts when needed, in two ways: short, simple prompts (“what else?” or “what are some other ideas?”), or using feelings and values mentioned earlier (“you mentioned feeling afraid in the alley, Jose, what ideas could help you feel less afraid?”)

During this open brainstorm, Inclusive mediators are steadfast in their commitment to avoid filtering ideas. If a participant says “As far as I’m concerned, she can pack her stuff and leave, because I am absolutely done with this shit,” the mediator will write on the board: “Kelly packs her stuff and leaves.” As explored in Case Vignette #1 (Appendix), every idea is listed without exception. While this may seem extreme, it is a powerful statement of nonjudgment and accountability. It says that mediators will not be editing, euphemizing, expanding, sanitizing, or correcting any idea mentioned by participants, and that they will run the process as they described. Silence may be a critical tool for brainstorming, and Inclusive mediators are reverent about not breaking silences that they initiate with a question.

In selecting ideas, mediators read the whole list aloud, ask participants to point out ones they think they could agree on, and circle those ideas. If an idea is debated at this stage, it receives a dot next to it, and the mediator commits to come back to it shortly. Once the early agreements are made, a new question is posed: “which of these ideas could work with a little adjustment?” and new circles and dots are applied. Then the mediators review the dotted items and ask for adjustments if desired. An Inclusive mediator might ask during the “adjusting” part of the solution stage, if they had both expressed some interest and doubt about the idea: “is there a way this idea could be adjusted to get you, Peter, the flexibility you’re looking for, and you, Shantay, the follow-through you’re looking for?” Some dotted ideas may be rejected by participants, and some may be adopted with changes, then circled. Reality testing in Inclusive mediation uses only the participants’ explicitly stated values and feelings as “reality”: “If all these ideas about the fence are implemented, will it give you the safety you are looking for?” Contingency plans may also be explored, using open-ended questions such as, “under what circumstances might these solutions not work, and what can you both do about that?”

7.5 | Agreement writing

The core values of nonjudgment, confidentiality, and voluntariness are carried through into stage five, Agreement Writing. The solutions selected by participants at the end of stage four are written in the future tense, with each line starting with a participant’s name, such as “George and Judith will take care of Alyssa every Tuesday from 8:30am to 5:30pm.” To the extent possible, participants’ names are balanced by alternation, so that it does not appear that one is making all the changes because his name lines the first page. Discussions about the past and admissions of guilt are kept private. Separate versions of an agreement are offered to all participants (one to keep private, and one to present to a referring agency) and participants might choose to have apologies only in the private version. Cases referred from the courts, state’s attorney’s office, employers, or other formal organizations may require that a copy of the mediated agreement be sent to the referrer. In these cases, participants in most Inclusive mediations are told that they have the option to prepare two separate agreements: one for the courts (or employer, or other referrer), and one that they may keep private.

8 | SKILLS EMBRACED BY INCLUSIVE MEDIATORS

Skills that Inclusive mediators embrace and reject are summarized in Table 1, and a few are expanded on below.

8.1 | Inclusive listening

Inclusive listening is the cornerstone of Inclusive mediation, with mediators reflecting back participants' feelings, values, and topics. Given a statement like “Josh is a mess, his room is filthy, he leaves everything for me to take care of, and I’m not his damn mother,” an Inclusive mediator would not reflect a summary of the speaker’s position (“It sounds like Josh’s messiness is making you angry and you want him to take responsibility, too”), but instead would break down feelings, values and topics (“so what I think I hear is that you feel burdened and insulted [feeling] with the housekeeping [topic], and that you are looking for cleanliness and accountability [value]. Is that right?”). Reflecting feelings helps build understanding (and possibly empathy) between participants, and helps them feel heard, which may ready them to look toward the future. Reflecting values, or what is important to participants, builds a deeper understanding about the need that is not currently being met, and associates negative positions and insults with a value that participants can use as a guide for possible solutions moving forward. By clarifying topics to be resolved, Inclusive mediators can generate hope that a big thorny conflict can be broken down into resolvable components.

8.2 | Win-win knitting

Inclusive mediators use Win-Win Knitting throughout the process of developing solutions: to prompt ideas in open brainstorming, to frame selecting ideas, to help adjust ideas, or to “reality test” agreements. The skill involves knitting a value or feeling from one participant with a value or feeling from the other participant(s), for example, “Earlier, Spring, you mentioned you are looking for predictability, and Stephanie, you mentioned you were looking for spontaneity. What ideas about the schedule could get you both predictability and spontaneity?”

9 | SKILLS REJECTED BY INCLUSIVE MEDIATORS

9.1 | Positional reflections

Inclusive mediators do not use traditional reflective listening or “mirroring.” Reflecting is core to the Inclusive mediator’s toolkit, but is limited to reflecting back feelings, values, and topics in the context of the participant’s story. A furious participant in a neighbor dispute might say “Pete’s a damn liar, just like his dad was, and they lied about the property line to the contractor, and put up a fence cutting five feet off the whole side of my yard. Take it down, Pete!” Reflecting back a furious participant’s position (“I think I’m hearing that you think you were lied to about the property line, and want the fence to be taken down”), generally does little to build understanding. Inclusive mediators also do not attempt to “positively reframe” the comments or reflect them back euphemistically, as this is seen as a judgment of the intensity, compromises neutrality, and moves away from authentic conversation and any natural momentum toward resolution. An Inclusive mediator might instead reflect: “It sounds like you feel deceived, and you’re looking for solutions around the fence that are fair and honest.”

9.2 | Sharing opinions

All mediator opinions are withheld in Inclusive mediation, even if requested by all participants. First, like most mediators, Inclusive mediators avoid making biased judgments choosing one participant over another: “Josh, it looks like you have more experience with the homeowners’ association, can you talk about the rules for window replacements?” Second, mediators in the Inclusive model avoid negative judgments about participant behaviors, such as “right, so maybe the Facebook post about Jill being adopted was not the best idea.” Third, and this is the most challenging to teach new mediators, they are also not sharing their appreciative opinions: “I can see that you have both worked very hard to get Jayquan the specialized health care he needs.” Fourth, Inclusive mediators avoid “joining” statements, such as “it seems like you’ve had as much trouble finding reliable, quality child care as my husband and I have.” Fifth, they avoid “normalizing” statements, like: “and like most people in Carroll County, you have really struggled with public transit.”

At stake here is the heart of the matter, dating back to the earliest theoretical values of mediation, as well as peacebuilding and alternative dispute resolution more generally, those of nonjudgment, individual self-determination, and community empowerment. People speak more honestly when they do not feel judged, they follow through on commitments they make when free of coercion, and they are more likely to execute plans they co-design.

9.3 | Guideline-setting and enforcement

Inclusive mediators do not set or enforce communication guidelines or ground rules for participants, out of a belief that only authentic conversation leads to authentic change; that forcing one communication style is culturally insensitive or biased; that neutrality is compromised; and that critical information may be shut out. On rare occasions, one of the participants may ask a mediator to police their communication (“Are you seriously going to let her talk to me like that? Her own *mother*?”) the mediator would first reflect back (“It sounds like you feel horrified and offended by the way communication is happening, is that right?”) and then ask participants for their ideas (“what would you both like to do about how communication happens during the mediation?”). Participants may then go on to set up guidelines for themselves during the session, if both agree, after which Inclusive mediators still do not enforce them in a way that compromises self-determination or the voluntariness of the process. Cursing, language charged with the weight of racial or other oppression, and what some might consider “verbal abuse” also do not cause an Inclusive mediator to intervene with guidelines or ground rules. Instead, the underlying values and feelings being expressed are reflected back and questions are asked to support both participants to articulate whatever they need to say. Allowing participants to engage in raw and sometimes painful exchanges, supports them to find their own way forward to understanding and often to develop a new way of communicating. If mediators control these conversations, rather than work toward deeper understanding, they rob participants of the opportunity to speak for themselves toward accountability and transformation.

10 | HISTORY OF INCLUSIVE MEDIATION

Inclusive mediation has been crafted in several of Maryland’s community mediation centers since 1995. Beginning in 1995 at the Community Mediation Program (CMP) located in urban

Baltimore, Maryland, community mediators joined together to serve Baltimore residents and build a conflict resolution center. Eventually they worked with other mediation centers to define both a nationally recognized definition of the community-based mediation delivery framework and to evolve a unique new mediation practice. As discussed above, community mediation, as a movement of several hundred community-based dispute resolution centers across the United States is of course much broader than the work in Maryland, with over 25 years of work predating CMP's launch (Charkoudian & Bilick, 2015; Hedeem, 2004; Shonholtz, 1984; Wahrhaftig, 2004).

11 | THE BALTIMORE CENTER

With space in an underused urban storefront offered by nearby Johns Hopkins University, and some seed funding from their graduate student union, Community Mediation began training diverse groups of mediators from many ages, races, orientations, occupations, incomes, and walks of life. Together, a grassroots group of volunteer community mediators continued to shape the mediation practice and training program, design center goals and policies, as well as build the community partnerships that became referral sources, mediation sites, and community training recipients. With nonprofit status in 1998 came more opportunities for both grant funding and government referral partnerships (such as a Community Development Block Grant from the housing department, and strong referral partnerships with the Police Department and State's Attorney's Office).

Duke Fisher, a mediator and trainer practicing in community mediation centers of Upstate New York, designed the initial trainings and mediation manual, using a facilitative, problem-solving framework undergirded by reflective listening skills, and the identification of participants' feelings, values and issues to be resolved. Having been trained by Mike Heahnel and Joseph Stulberg (see Stulberg, 1981), he built on Fisher & Ury's model of looking at underlying interests rather than positions, and examining more options than the win-lose battle over each issue in the conflict. Using ideas from Rosenberg's (2002) *Nonviolent Communication* and Quaker and Unitarian Universalist non-violence training for street activists, he then worked with Barbara Potter to streamline the process steps and teach key skills, most uniquely win-win knitting (see description below). Interwoven in the training were experiential exercises and conflict resolution theory long used by the Alternatives to Violence Project (Miller & Shuford, 2005; Wolfe, Wekerle, & Scott, 1996), who were offering transformative anti-violence trainings in prisons nationally (and still do). The experiential ethos of the training, and continuing invention of experiential education components were influenced by Friere (1970) and by Boal's (1979) theater of the oppressed, calling for methods that are accessible across race, culture, education level, and socioeconomic class, where learners teach each other in community.

12 | STATEWIDE ORGANIZING

Uniting with the pre-existing suburban Anne Arundel County Conflict Resolution Center and rural mediators in the then-newly formed CMP in the Center for Conflict Resolution (formed from the Center for Teaching Peace) at Salisbury University, CMP leaders pulled together a coalition of mediation providers to begin statewide mediator training work and

coalition building. Initially known as the Maryland Association of Community Mediation Centers, the group grew to 18 member centers, and has since 2005 been known as Community Mediation Maryland.

At the same time, a Ten-Point Model of Community Mediation (discussed above) was developed in Maryland by a coalition of community mediation providers united through the Maryland Alternative Dispute Resolution Commission in 1998, and the resultant Maryland Judiciary's Mediation and Conflict Resolution Office. Currently, 13 of the 14 community mediation centers in Maryland practice using the Inclusive mediation approach, who have collectively been mediating in the range of 2,500 cases a year in each of the past 3 years (CMM, 2017; CMM, 2018; CMM, 2019), due to community outreach and referral partnerships including schools, correctional facilities, courts, neighborhood groups, houses of worship, law enforcement and prosecutors, and more.

13 | EVOLUTION OF A MEDIATION STYLE

Over time, the most significant changes from the facilitative, problem-solving model have included: framing topics, inclusive listening, abandoning guideline-setting, a formal brainstorming process that considers all ideas, win-win knitting (see description on p. 19), and increasing focus on the process, not the product of written agreements.

These changes happened in a local practice community of grassroots volunteer mediators, as well as in a statewide community of mediation trainers and evaluators in Community Mediation Maryland's performance-based evaluation program. Other inner city community education work done by CMP in Baltimore also shaped the Inclusive mediation model. For example, Inclusive listening was refined in its practice not just in the relatively controlled environment of well-prepared, voluntary mediation sessions, but in the chaotic environment of mandatory Police Academy and inservice trainings, workshops with middle schoolers, neighborhood skill-building workshops, teacher professional development, and many more. This is important for two reasons. First, the trainees themselves, compelled to attend, were not necessarily excited and happy to learn the material – not “bought in” to conflict resolution or peacemaking as a useful concept or shared value. Because of this, the skills had to be well-taught, but also be accessible, appealing, and inclusive of all types of learners, capable of being learned and practiced at a basic level in a few hours' time. Secondly, these trainees' listening skills were refined in the real life of Baltimore city streets and schools with high rates of volatility and serious violence. If the skills did not work in high-pressure situations, did not work to include all types of speakers in all types of conversations, and did not produce authentic shifts in anger and hostility, Inclusive listening trainers would not have been invited back. The skills had to work in practice.

Finally, the design of Community Mediation Maryland's Performance-Based Evaluation process for the Inclusive mediation model helped clarify and define the Inclusive style. Following extensive research and building on the successes of performance-based evaluation processes at the San Diego Mediation Center, Family Mediation Canada, the Maryland Council for Dispute Resolution, and the private practice known as the Baltimore Mediation Center, CMM's performance-based evaluation consists of a 100-item list of skills that a mediator can exhibit in an in-depth videotaped mediation simulation. It was the first evaluation process nationally to be acknowledged by the Association for Conflict Resolution for conforming to their model standards for mediator certification programs (ACR, 2011).

14 | CONCLUSION

In answer to the call for better definitions of mediation approaches, to benefit both consumers and practitioners, we have worked to define the theory and practice of Inclusive Mediation, including its theoretical roots, history and evolution, research on its effectiveness, as well as the mediator skills embraced and rejected by Inclusive mediators, and the steps of the Inclusive Mediation process. Grounded in the community mediation movement's commitment to radical inclusion of all people, places, times, and problems involved in the conflict, Inclusive mediation combines skills and process to expand that inclusion to all modes of expression and conflict topics that mediation participants themselves determine are best.

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APPENDIX

Case Vignettes by Michele Ennis. #1: Parenting Plan

“So there were two parents who had been married and were going through the process of divorce. We were handling the two mediations separately, the divorce and the parenting plan. We had let people know that we were going to write all the possible ideas down, that they could be as creative as they like, and that there would be time later to evaluate those ideas. As we were capturing ideas, there was concern that had come up repeatedly from one of the participants about the possibility of the other one becoming involved with someone else. We had reflected those concerns consistently, and ultimately, they had chosen to shift their focus back to the parenting plan. However, it was painful, so there were times that it would still come back up. So we were in the throes of the brainstorm, and one of the participants looked at the other and said ‘I know you’re doing it, I heard that your vehicle was at her house, why would it be there at 2:00 in the morning? Just tell me, just tell me the truth!’ And so I wrote ‘Jim tells Ashley the truth.’ Then Jim turns to Ashley and says ‘I am not doing it, I swear to God I can wait, I can wait the year. I tell you what: you can cut my dick off and put it in a Ziploc bag, and put it in the freezer for all I care, and I’ll get it reattached in a year. I can wait the year.’ And I captured each of those: ‘Ashley cuts Jim’s dick off. Ashley puts Jim’s dick in a Ziploc bag. Ashley puts the dick in the freezer. Jim has his dick reattached in one year. Jim waits a year.’ As I read through them, the participants were aghast, and looked at one another, and said ‘she really is gonna write everything absolutely everything up there! She’s crazy! We’ve gotta get serious. Alright, we need to focus.’ So then there was this amazing moment of honoring their self-determination, honoring the process, when we’re saying that we’re going to be non-judgmental, and we’re going to capture all of the ideas and we fulfill all of those ethical commitments. It also meant honoring that when people are ready to get serious and shift their focus, they will. Not as a result of being judged or shamed, or policed by us as mediators, who’ve ethically made a commitment not to do so, but because they’re concerned about their own productivity, or efficiency, but they also get to express whatever they need to express. The shift and gift of this process was clear to all of us.”

#2: Prisoner Re-Entry Mediation

“It was the third session, with a gentleman who was incarcerated, his mother, and one of his siblings. There was a lot of concern that the family had expressed about decisions being made by the mother, about who was residing in her home. She had been a quiet participant. And at one point she spoke up and let them know that she had gotten to where she was in life, (an older woman with assistance, with a walker), that she’d gotten to this point in life because she had been where they are, and she just kept going and waking up more days. She said that they needed to be able to believe that she knew how to handle herself, and was going to be able to make decisions, and trust that. It was a very strong statement.

“I spoke up to reflect back to her, and before I did, her son looked up at me, and put his hand up, and said, ‘Uh, if you don’t mind, can I give it a shot, can I try?’ We do not ask people to do that at all, that’s not part of our process. But he just spontaneously decided to reflect, and he turned to his mother, and said, perfect, with distancing phrase, and check-in phrase, ‘So, Mom, what I think I’m hearing you say is that you’re really feeling capable and strong, and really ready for us to respect what it’s taken for you to get here in life, and wanting us to have patience as you’re making these decisions, is that right?’ She turned to him, broke down, and said ‘you really do love me!’ and took his face in her hands. It was a great reminder for us of

the contagiousness of listening deeply, and of working on understanding. We can create a culture of it at the table, one that can and will continue because people receive it, and because they are impacted by it, not just because they are told to do it.”