Newsletter

UNIVERSAL DISCLOSURE PROTOCOL FOR MEDIATION (UDPM)

Elements of UDPM

Conflict of Interest
Confidentiality
General Process
Role of Mediator/Parties
Technology
Impact of Venue

ISSUE #1: JANUARY 2026

In this inaugural edition of the UDPM Newsletter we are pleased to offer a summary of a conversation with one of the most important international advocates of the UDPM, Jeremy Lack.

Jeremy is a lawyer and dispute resolution expert neutral with admissions to the bars of England & Wales (1989), New York, USA (1990), and Geneva, Switzerland (2003, as a foreign lawyer). He specialises in international commercial, technology, life sciences, intellectual property matters, and complex disputes. He operates his law firm, LAWTECH.CH, and is a founder and director of INNOVADR LTD, a Swiss company that invests in bespoke Appropriate Dispute Resolution (ADR) processes. He holds positions as a Door Tenant at QUADRANT CHAMBERS (GB), counsel to HELVETICA AVOCATS SARL (CH), and Ombudsperson for DRUGS FOR NEGLECTED DISEASES INITIATIVE (CH). His experience includes roles as General Counsel to companies like SONARSOURCE SA (CH) and MINDMAZE (CH), International Counsel to BECTON DICKINSON, INC., and board memberships across various organizations.

On 19 January, Jeremy took time out to have a zoom conversation with Daniel Rainey.

> **Daniel Rainey**: You you talk in the article that you did about four different social approaches, or cultural approaches to mediation, which I find a very good shorthand description of that. If you could just sort of very briefly go over that, and then at the end, the so what question that I always like to ask is, now that we know that, so what? What does that have to do with UDPM?
>
> **Jeremy Lack**: I just took four of the simplest and most commonly referred to. The first one is the Anglo-Saxon Getting to Yes approach. If you look at the Anglo-Saxon model, and I don't want to go into the details of it, because there are many variants to it and so on, but the underlying assumption in getting to yes is that a good mediation is one that gets you to yes. So, no deal doesn't mean lack of success, but it's less successful than when they did reach a bottom line. And the approach teaches you, basically separate interests from positions and so on, but the whole use of caucuses, is really about the mediator using his or her best judgment to try and work out what is going to be most effective at that time to get people to a yes.
> [*Roger Fisher, William Ury, and Bruce Patton: Getting to Yes*]

For the Germanic, including Scandinavia, Germany, parts of Switzerland and Netherlands as well, their approach, as I've seen through the trainings I've been to, Austria notably, is that mediation is a social process. It's not so much about outcome, it's about the quality of slowing down dialogue and helping the parties to speak to one another. So, they use language about deceleration, they use the Glasl scale, the escalation conflict scale of Glasl is key to working out what to do and how to do it, but at the end of the day, for them, it's all about organizing that social opportunity for the parties to reconnect and have dialogue. Therefore, a successful mediation for them is, was there a decent conversation at any stage, regardless of whether they settled or not?
[Friedrich Glasl, Confronting Conflict (Hawthorn Press), Praxishandbuch Konfliktmanagement und Mediation in Organisationen: Grundlagen, Strategien und Methoden für Führung, Beratung und Mediation (Vandenhoek and Ruprecht)]

The francophones love Tom Fiutak's approach. While he's relatively unknown in the U.S.A., he's adored in France, and everything is done through his approach: the 4-step wheel is very much in phase with French Cartesian logic. So, in France, they don't talk about getting To Yes, they don't talk about Glasl. And the result, in a way, is that the French don't care if a mediation's settled or not, and they don't care if it led to a good conversation between the parties or not. The only thing they care about is, did you respect the process? The mediator's obligation is to make sure that on every topic, you follow the wheel and you asked each of the process questions at the different stages, because a successful mediation for them is that you followed the process appropriately. Whether parties decide to do a deal, that's their issue.
[*Thomas Fiutak, et al., Le médiateur dans l'arène : Réflexion sur l'art de la médiation (Érès, 2009*)]

Finally, when it gets to the Asian approach, I think there is a cultural proponent that is so important in certain Asian cultures of harmony, that, as long as the mediation achieves harmony, it's successful. This allows the mediators to do things that would maybe shock us in the West.
So, for an Asian mediator to also be an arbitrator, to swap hats, to put pressure to settle is totally appropriate, as long as it leads to social harmony. China has 4 different definitions of mediation, and there are

different approaches to it, depending on which type of mediation you want in mainland China.

The bottom line is that I do believe these give invisible differences to how mediation will be conducted and thought to be successful. So, what does this mean in practice for UDPM?

Let's assume you have an American lawyer, an American party who is there for efficiency. They want to get to an outcome, but they find themselves on the other side with a French mediator and a French law firm who are looking at process. You can see a disconnect arising, because they just have different understandings and appreciations of mediation.

You remember Manon Schonewille did a book called *The Variegated Nature of Mediation*. She looked at 60 jurisdictions, and to her astonishment, realized that no two of those 60 jurisdictions had the same approach and definition of mediation. I think that's one of the reasons why Ana and you got so interested in UDPM also, because it's a real need in the mediation industry. You can talk about common law, civil law, arbitration, and some fundamental things about legal civil law approaches. Whereas in mediation, because of the cultural and subjective dimensions you really have to parse this out and be much more granular and specific in diagnosing a case and designing a case that is appropriate for a cross-border situation.
[Manon and Fred Schonewille, The Variegated Nature of Mediation, Eleven Publishing]

Daniel Rainey: You're not unique, but you're sort of a rarity for American mediators, and that is that you have operated in all four of these venues that you talk about, so you've seen them face-to-face, and have been trained and done training in all of them, and have done practice in all of them.

Jeremy Lack: I think UDPM is not about the technology, or the general process or the confidentiality. It goes even more substantively to how will you go back and view this to have been a successful mediation?

Daniel Rainey: So, from your point of view, as a mediator operating across these various approaches to mediation how do you use the UDPM? What is your process? What do you do when you sit down with parties?

Jeremy Lack: You're basically doing process design with the parties to deliver to them up front what it is they would like and what they're expecting. So, I think that's cutting through the protocol, that's cutting through the details of it. I start with a diagnosis, a diagnostic test, and I say on a scale of 1 to 10 to what extent is this dispute about relationships? To what extent is it about money, and to what extent is it about complex forensic issues that need to be unraveled? On a scale of from 1 to 10, I just ask them to give me a number on how important is relationship, how important is money, how important are forensic technical issues? If I hear that forensics are important, I'm going to need to think of a process that allows to integrate some type of expertise, whether it's evaluative, non-evaluative, whether it is binding, non-binding. If you look at relationships, and people say to you, well, look, relationships are really important in this case, then doing a caucus-based mediation doesn't seem to me appropriate, because that's where maybe the more Germanic notion is to help the parties reconnect and have dialogue. That gives you a sense of a diagnostic tree that, for me, now, I start to think of which tools do I want to use from the different trainings and I can go to them and say, okay, you know, we have a starting point for this mediation. We've agreed, kind of, that what's important for you in terms of these three criteria of relationships, money, forensics. I'll even use mixed modes for that if I need to. Bring in an expert, bring an early neutral evaluator, bring a co-mediator or co-conciliator. But for me, this is part of the mediation. Some people say this is all pre-mediation, pre-caucus. Using the UDPM, people are going to get what they expected, and there are no surprises, and this is what they want, and they can change ideas halfway through.

Daniel Rainey: That's a very good enunciation of how you use it and how it would work for an experienced mediator. If you can, for a moment, put on a hat as a new mediator, somebody just coming out of training who does not have the perspective that you've got. What is the usefulness and how would you use the UDPM in that situation?

Jeremy Lack: Well, this is one of my problems with some of the basic trainings I've seen, and I think it goes to a deeper issue of what are standards and qualifications. I've seen mediation trainings that teach you primarily to do everything in caucus. On the other hand, I've seen mediation trainings that are about doing everything in joint session. I mean, in my Austrian trainings, I was told the moment you do a caucus you have to stop calling it mediation because you've kind of crossed the line of what makes it mediation. Mediation is all about the social process, reinstating dialogue. The moment you've done a caucus, you are basically saying to the other side, you can't trust them, you can trust me, the mediator, but not the other side. So, in a way, you've destroyed some of the ethos of what mediation's all about. But, you know, I think that's going too far as well. What would I say to a young mediator who's only done a Germanic training? What would I say to a young meter who's only done a U.S. training. I would say, do more trainings. We do have an obligation for continuous professional development, and I think that's one of the great things that mediation brings to us - this notion that humans are complex animals, they're highly emotional, they're social, and they can be very rational or irrational at times. We've got to tell young mediators to think about getting experience that allows you to move out instead of staying on a narrow track that you've been taught.

Daniel Rainey: Using UDPM or something like that basically is a way to create some sense of harmony on the front end. Often, especially in the U.S, we think about the notion of self-determination as being the ability to say yes or no at the end of the process. And for me, self-determination starts when we first sit down and have our first conversation.

Jeremy Lack: We have such a thing as social plasticity, our sense of in-groupness or out-of-groupness. When we perceive ourselves having an in-group conversation without our realizing it, our brains open up empathic pathways, so that when you say something to me, I'm more likely to take it as something that I can connect to and listen to. I believe that UDPM and process design help to get people into an in-group mode much earlier on. When people understand what are the values, what is are they trying to seek, what is the purpose of this mediation, they are more likely to listen to the other party.

> I found UDPM when It was first presented, as I recall, in 2019 at the Singapore convention, when they were getting it signed, and it was this pre-event, and you and Ana had come up with this article that was presented, and I think it was really a seminal moment for everybody who heard it. It was an "aha" moment for so many people in the room. But I don't know to what extent we've done it merit. I don't know to what extent we've been able to take up that thinking, to reanalyze it. In a way, it is about how do we take the concept of UDPM and how do we readdress it or realign it? I would just say we need to keep this conversation going, and we should be looking at how to evolve both UDPM and mediation.

For more information about the UDPM, go to the website at UDP.org, or contact the newsletter editor, Daniel Rainey, at daniel@danielrainey.us.