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by LawFuel Editors

## What Star Hollywood Mediator Lee Jay Berman Can Tell Lawyers About The Power of Mediation and Achieving the One Thing Every Lawyer Wants



Mediator Lee Jay Berman may not have qualified in law, but he has become one of America's most sought-after mediators, resolving seemingly insoluble disputes from rock band breakups to seemingly 'irreconcilable' business and personal disputes. And he has some thoughts on how lawyers can use mediation effectively for the one thing every good lawyer wants – a **happy client**.

Much of what LA-based mediator Lee Jay Berman does is less showbiz and more just getting down to business – like finding a resolution to a seemingly intractable issue.

Mediation, he says, is a question of “crafting a better solution”. But sometimes it seems that crafting the winning solution runs counter to the way many lawyers are trained to operate. “Mediation the “soft, touchy way” to resolve matters any more. It’s getting better outcomes and using a better process than litigation.” He notes that mediation, unlike litigation, permits clients to control the outcome. They have come together across the table because, notwithstanding how much contempt, hatred or distrust may exist, all parties are seeking that “something” to fix the problem.

Litigation can seldom achieve that result with its win/lose construct. A good mediation process is win/win.

### The New Career

Mr Berman is not a lawyer himself, but came to his then-new career after spending time in his family's clothing business, entering real estate development and becoming involved in a dispute that required mediation.

He knew then that he had found his calling. Since then his public education and training role and his private practice has boomed and his Rolodex of clients, speaking engagements, consultations and lectures has created a profile as high as any in the increasingly busy and popular world of mediation.

He has consistently achieved resolution rates of around 90 per cent year after year, trained judges and others, as well as lecturing and handling what often appears to be totally intractable, complex disputes. His success as a non-lawyer perhaps demonstrates the fact that successful mediation is not a matter of handling legal issues alone, but rather a raft of issues ranging from risk analysis and negotiation to neuroscience and a deep understanding of what motivates individuals.

There is a strong legal overlay to the process, but there is also much more too. A variety of issues have helped propel mediation as the ideal, legal problem solver: As an [ABA article on mediation](#) and Lee Jay Berman from 2012 pointed out (and little has changed on any of the counts) “Court budget cutbacks, the high cost of discovery, crowded dockets and emphasis on result-oriented “value billing” have created the elements of a perfect storm for a mediation wave. Results for “divorce mediation”—an allegedly less expensive, more humane alternative to family court—fill search engines.”

### Don't Judge A Mediator By His or Her Career

“The biggest misconception about mediation and mediators is that people judge them by what their career was before they became mediators. It truly is its own practice area.”

He notes that the sheer variety of disputes mean that mediation increasingly has a place in the world previously inhabited by litigators alone. The use of mediation is a tool that lawyers should use – and are using – with increasing frequency.

Its popularity, however, has come with a degree of inconsistency in the US, at among others, in terms of training and with the differing state and local rules that apply.

There are various statutory provisions at the state and administrative level in the United States, such as labor relations boards, public utilities and social services and which has seen separate rules adopted in respect of mediation practices. All of this requires increasingly well-resourced and trained mediation professionals. Then there are the local courts often have their own individual rules for either mandatory or voluntary mediation, which has left the US as something of a patchwork quilt of different mediation laws and rules.

He has always been a strong proponent of public education on the merits of mediation, but also for proper mediator training. His focus on both lead to his establishment of the [American Institute of Mediation](#) (AIM) which offers an extensive training program for mediators. The various and variable training that has been available has lead to an uneven field of mediators with some programs providing limited training, which may provide only rudimentary levels of education. The AIM course raised the bar with a 40 hour course.

When LawFuel spoke with Mr Berman he was in New Zealand addressing their mediators and arbitrators forum ([AMINZ](#)), where he noted the high level of training provided by the organization, compared to much of the training available in the US.

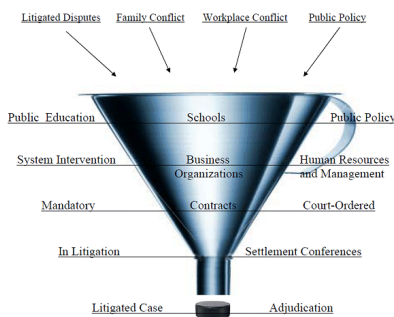
## Driving Mediation Growth

Among the main drivers for mediation dispute resolution in the US and elsewhere has been developments like the United Nations Commission on International Trade Law ([UNCITRAL](#)) and the [World Intellectual Property Organization \(WIPO\)](#).

It has also grown increasingly popular in most jurisdictions as an alternative dispute resolution (ADR) tool, in part due to the prohibitively expensive costs of litigation, along with the delays and complexities of handling disputes in the traditional way.

And as mediation at a more low level, such as family and business disputes have arisen, so too has been the framework within mediation is practised. Lee Jay Berman refers to his own California jurisdiction, noting that in Los Angeles mediation has been “used like a firehose” and exposed a lot of people to the process, but often with poorer qualified mediators. It is the training of mediators, including of course lawyers and often also judges, that has been one of Mr Berman’s principle concerns and part of the reason he set up AIM.

The variety of claims available for mediation to resolve along with the obvious benefits of achieving that ‘happy client’ outcome are all good reasons to continue to advance the mediation cause.



He has refers in an earlier article [he wrote on the “funnel”](#), where the dispute, of whatever kind, is tipped into the top and then then (hopefully) resolved via a range of alternatives, including litigation and mediation.

One of the most important advantages in mediation is the requirement for the parties to maintain their commercial or personal relationship, without being dragged into the kicking-and-screaming litigation scenario where relationships are burned for good.”

The requirement for confidentiality is another key reason for those adopting the mediation process.



Image: AdWeek

## The Boys in the Band

His successful mediation in a potential rock band break-up is one high profile example of how mediation can be used to meet the varying and various requirements of the parties.

The (unnamed) band was globally successful but largely due to the songwriting and related talents of one person. However others also had strong interests to keep the group together, if only it didn’t take Lee Jay Berman to let them see that.

“One just loved the music, one needed the fan adoration, one wanted a legacy to be a ‘timeless band’ and one wanted the money to provide future security for himself and his family.

Litigation would have torn the band apart and not necessarily given any of them what they wanted. “They wanted to sort things out without reading about it in the press and they also wanted to understand one another better.”

## The Lawyers’ Opportunity

The growing popularity of mediation presents a major opportunity for lawyers. It continues to rise in popularity in most jurisdictions as an alternative dispute resolution (ADR) tool, in part due to the prohibitively expensive costs of litigation, along with the delays and complexities of handling disputes in the traditional way. For instance, the growth of mediation in jurisdictions like the UK and Singapore

have seen those centers become increasingly significant in ADR generally, although the growth has been somewhat sporadic in other jurisdictions.

However the use of English as the principal commercial language and a large number of well qualified mediators has helped boost the popularity of mediation and its obviously close alignment with legal practice presents a major opportunity for firms to embrace.

In the UK the [CEDR biennial audit](#) showed a growth in commercial mediation claims of £11.5 billion for the 12 months from 2017, which saved businesses £3 billion in wasted management time, damaged relationships, lost productivity and legal fees according to the audit.

Having well trained mediators has also been useful – along with the English language advantage.

Mediation’s suitability to resolve disputes of an international , national, local, personal or any nature is one that is set to continue as Lee Jay Berman spreads his gospel and lawyers increasingly realize that firing shots at one another via hyper-expensive litigation is not often the best way to get the desired result – and create that ultimate lawyer goal – the happy client.

From:  
<http://www.lawfuel.com/blog/leejayberman>