

# Challenging Conventions In Challenging Conditions: Thirty-Minute Mediations At Burning Man

by [Tim Hedeem, Ron Kelly](#)

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Ron Kelly is a mediator and educator in the San Francisco Bay Area. He exemplifies many of the region's best-known characteristics: the innovation of Silicon Valley, the "edge" of SoMa, the intellect of Berkeley, the generosity of Menlo Park, the calm of Sonoma. He's played a central role in forming the mediation laws and court rules in California. He designed the mediation training for lawyers, judges, and business professionals for UC Berkeley's Continuing Legal Education Program, where he's been teaching for more than a decade. He is at once strong-willed and affable, challenging and caring, serious and humorous. I interviewed him to learn about the compact, efficient process he offers at his mediation booth at Burning Man, the weeklong event that brings more than forty-eight thousand people to the harsh Black Rock Playa in Nevada every summer. The festival's Website explains that:

Burning Man is an annual experiment in temporary community dedicated to radical self-expression and radical self-reliance. There are no rules about how one must behave or express oneself at this event (save the rules that serve to protect the health, safety, and experience of the community at large); rather, it is up to each participant to decide how they will contribute and what they will give to this community. The event takes place on an ancient lakebed, known as the playa. Art is an unavoidable part of this experience, and in fact, is such a part of the experience that . . . each year [is given] a theme to encourage a common bond to help tie each individual's contribution together in a meaningful way. Participants are encouraged to find a way to help make the theme come alive, whether it is through a large-scale art installation, a theme camp, gifts brought to be given to other individuals, costumes, or any other medium that one comes up with.

**Tim Hedeem:** Providing mediation at a festival known for sculpture, music, costumes, and self-sufficiency in harsh natural conditions—not to mention some pyrotechnics—seems a little odd. Where did you get the idea to do this?

**Ron Kelly:** I had a cousin who said, ten years ago, "You have to come experience Burning Man . . . it's too wild to continue to exist in our society. It's going to be outlawed soon." I went, and was astonished by the sense of community and generosity. The festival operates with a "gift economy," where participants come [to] give away something they've created or collected. I was so moved. I felt that if were I a salmon fisherman, I would have brought a hundred pounds of salmon to give away as sushi. I'm a mediator, so I set up a booth to provide mediation services. The emphasis on creativity led me to design a pyramid structure for a booth and a mediation process that would be rapid and focused. I wondered whether I could really benefit anybody in half an hour. Would anyone take the booth seriously? Both the booth and the process turned out to be a wild success. And I've continued to do it for the last seven years. There are pretty normal relationship issues with couples and between family members. There are typical neighbor disputes about noise, boundaries, and relations. These are all magnified a great deal by the intense heat, dust, and wind, and lack of

normal services. You're in the middle of the desert, and you can't buy anything but ice and drinks. You have to bring everything yourself.

**TH:** How does it work? Can you outline the process you employ?

**RK:** I use virtually the same process working with individuals or couples. When I work with individuals, it's coaching; with couples, it's mediation.

When a couple comes in, I explain that first I'll listen to each one for five minutes. I say to one of them, "I'm not going to say anything, I'm just going to listen. I want you to tell me, as open-heartedly as possible, what's going on for you." I do my very best to be fully present with them and to listen with complete attention. I don't say a word. [Ron uses a kitchen timer to keep the process on track, timewise.] Then I turn to the other person: "I don't want you to respond to what the other person said. I want you to tell me as open-heartedly as possible what's going on from your perspective, and I'm just going to listen to you."

Then I explain to the first person, "The next five minutes is very structured. I'd like you to answer these four questions:

1. Do you want to solve the problem?
2. If you had to put it in one sentence, just for now, what's the problem you want to solve?
3. With any problem there are a number of ways you could try to solve it. Some of them will work better than others, some you don't even want to try. I just want you to list some of the ways you could solve this problem." (I often have to move them through their list without discussion: "Suppose you're on a game show and they'll give you \$100,000 for each way you can list.")
4. Then in the final minute, I ask, "If you had to pick one just for now— you could pick a different one in five minutes—which one seems best to you?"

I ask the same questions of the other person.

To start the last ten minutes, I usually depersonalize or normalize the conflict. I might say, for example, "This is a very common situation I see here. The extreme conditions can easily ruin anyone's food in an hour," or "Yes, there's a great deal of easily available sex here. It puts a severe strain on many relationships." Then we work to blend together and flesh out the solutions they've identified. "What if you did both of those? How would you blend what each of you identified as the best choice? What exactly would that look like? How would you be different with each other in the future?" In the last five minutes, if I'm working with only one person, one side of the conflict, I might help them think through how they will approach the other person. I often role-play how they will actually talk with the person they're fighting with.

**TH:** How did you create this process? What concepts or theories underlie it?

**RK:** Let me note that I don't claim to have invented this process, so much as I synthesized it. I selected classic elements from others' work and assembled them in a new way. I've attended hundreds of trainings and workshops over the years, and continue to go to a couple every month.

The first five minutes with each person, the elicitive part, is rooted in one of the most important principles I know: Until a person feels heard, they usually can't listen to others' ideas or change their perspective.

**TH:** So do you use "reflective" or "active" listening, as many mediators learn in training?

**RK:** No. In fact, I use a very different form of listening. Active listening, as our field uses the term, normally means making someone feel heard by feeding back both the facts and the related emotion of their story. It's a very valuable technique. But I've found that no matter how I respond while listening, my response guides the discussion. What I reinforce, or don't, tends to steer the conversation toward or away from certain topics. I've found that complete nonintervention for five minutes allows speakers to go places I wouldn't expect. Almost no one is provided five minutes to speak uninterrupted with full attention about a problem they're having. Two other things happen during this time. I'm modeling for their partner listening intently without interrupting, and possibly the most useful thing that happens is that the partner hears the person speak without interruption.

**TH:** So you think that exactly how you're listening is important to this process?

**RK:** Definitely. And I want to say something about the mediator's personal presence during this initial elicitive stage, but I'm not sure how to express it. I seek to be fully present with the speaker, doing my best to listen to every single word, see every facial expression. Can you imagine listening to a loved one with such focus and intention, listening with such connection, that if just your thoughts wandered for a moment—not even your gaze—your partner would feel it? If you can, then that's the sort of attention and openness I try to provide in the booth.

This is difficult enough in a calm setting. You can imagine what's it like while a loud Dixieland band marches past the booth, or in the middle of a white-out dust storm so thick we can't see each other four feet away. And yet my practice is to be listening as open-heartedly as possible while they're speaking, regardless of all the distractions that so often surround us.

**TH:** And then you turn to a series of questions.

**RK:** Yes, the directive part of the process, which I adapted from San Francisco's Community Boards' efforts to distill mediation into its simplest form for young conflict managers.

A crucial understanding here is that this part is directive regarding the process, but not the content. All possible solutions they identify are their own. I'm very pushy moving people through four classic problem-solving steps—buy-in, problem identification, brainstorming, and choosing a potential solution. It all happens in five minutes.

I'm also giving them permission to discard the solution they presently think is best. The point isn't to have them come up with the right answer in five minutes; it's to encourage them to brainstorm and select a possible resolution in five minutes. We then spend the last ten minutes exploring how we might weave their possible solutions together.

**TH:** Can you provide an illustration of the type of case you've mediated, perhaps one you consider rewarding for you and the parties?

**RK:** A couple came and sat in my booth somewhat reluctantly, not sure it was for real or would do them any good. It was the woman's first time at Burning Man. Her fiancé had talked her into coming to "share this incredible experience together."

She was so fed up with him that she was insisting they leave Burning Man immediately, or she would go home without him somehow, and very likely split up with him permanently as well. After all the work it took to get there and set up everything, he was not about to just pack up and leave again after only a couple of days.

She said she was miserable. Her fiancé was constantly criticizing her, bossing her around, and treating her like a little girl. She was absolutely not going to stand for this. If this was what he was really like under stress, it was good she discovered it now, before they'd married.

From his perspective, she would repeatedly leave their food out where the heat would ruin it in an hour. She would walk out into the wide open desert spaces without water or dust protection. Intense hour-long white-out dust storms can spring up almost instantly. She was endangering herself. As the experienced camper, he was only trying to get her to realize what she needed to do to get through a week in the desert. She not only refused to act responsibly, she would blow up angrily no matter how delicately he pointed out what needed to be done. He was completely fed up with her childish behavior. Both were seriously questioning their impending marriage.

In the problem-solving phase, both were able to come up with several workable possibilities for changing their own behavior. In the final ten minutes, I explained that these same issues stressed numerous couples at Burning Man to the very brink of separating. This helped them view the problem less personally. They had a real breakthrough in understanding each other. She came to the sudden realization that her father had treated her like a stupid, incompetent little girl, and when her fiancé raised certain issues she was thrown back into the intense shame and anger of that little girl of her past.

Both came to embrace a key language change I suggested: that he “triggered” rather than “caused” her sudden strong emotions. Both went off expressing a sense of wonder that they now had such deeper insight into their problems, simple language to talk about it without blame, and a determination to stay at the festival and work through their issues together. They were enormously grateful, and walked away beaming, arm in arm.

**TH:** It sounds as though this mediation set a solid foundation for their marriage.

**RK:** I hope so, and that reminds me of working with another couple, who were already married. I was about to close down my booth for the evening, when this couple rushed up and begged me to stay open. They explained they wanted to have children together, but had such intense problems they were hesitant to become parents. As I listened, I heard a ticking time bomb that would shortly explode and hurl him into prison and their marriage into divorce court. She was alone at home all day and intensely lonely. She had come to the United States from another country, and had limited English skills and little community here. She longed for the close loving relationship and family she had married him to create. He was commuting a long way, working overtime in a physically and mentally demanding job. He was struggling to work his way up to where he could financially support the family he wanted. He was completely exhausted when he finally got home. He desperately wanted to relax and unwind without her constantly pressuring him to do things with her and for her. Their evenings were a recurring downward spiral of opposing unmet needs and loud fights.

She had left her country and her family to marry him. She described her fierce determination to get him to pay attention to her. She found herself frequently cursing him and sometimes even hitting him. She was small. She described punching him like a little sister harmlessly hitting her big, strong older brother.

He was working really hard to support them both, and angry at her ingratitude. He was completely enraged when she cursed him, and just barely able to keep himself from exploding physically. He was quite afraid that some evening pretty soon he was going to lose it and hit her back hard.

As each gave their explanation of the problem, it seemed neither had ever before grasped what the day had been like for the person they encountered each evening. I explained how common this situation was. I told them I knew another couple much like them. The husband had finally exploded, had hit his wife back hard, and had ended up in jail. Their marriage appeared over, their young children to grow up in a broken home. It took a great deal of work by many people to save their family. That couple came to understand they could never touch each other in anger again. A decade later they were still raising their three children together in a loving household. The couple I was working with in the booth realized how close to this they were. They made a pact to develop early warning signals to short-circuit their escalating anger, to stop the inflammatory language, and to never touch each other in anger. They committed to entering into couples counseling. They went off convinced they could work through their problems and have the family they both really wanted. As I often do, I felt deeply honored that total strangers had been willing to be so open with intensely personal matters, and amazed that such insight and change could come in half an hour.

**TH:** These sound like very constructive, productive mediations. What's the least expected matter you've engaged at Burning Man?

**RK:** A case I found both disturbing and challenging involved a man who said he was fighting with his other identity. He really seemed to exhibit a split personality, and I did my best to conduct a mediation between his two personalities. I also encouraged him to get some additional help for his dilemmas; I wish I'd said "professional help" but I don't recall being that specific. This case highlights for me that as mediators, we draw on skills from a number of professional areas—mental health, law, accounting, and others—and we need to maintain appropriate boundaries in our practice.

**TH:** What advice can we tease out of this experience for readers who might contemplate offering mediation on a drop-in basis?

**RK:** I think that it's critical for all mediators, including those who would offer drop-in services, to be prepared to work respectfully with whoever comes calling. Part of that preparation is to recognize cases and clients who might benefit from another service, whether or not mediation is a good fit in addition to those services. It's imperative that mediators know whom they might consult to ensure a client will have a productive mediation experience. I'm reminded of one of your articles a decade ago, in which you and Pat Coy stressed the importance of being as inclusive and accommodative as possible. It raises difficult questions. Can you ethically, or legally, deny services to someone who has a disability or impairment?

**TH:** Your acceptance of this guy reminds me of "radical inclusion," one of the festival's "ten principles." The others are gifting, decommodification, radical self-reliance, radical self-expression, communal effort, civic responsibility, leaving no trace, participation, and immediacy. Which of these principles led you to create your booth?

**RK:** From the first day I attended Burning Man, I was deeply moved by participants' generosity and willingness to expose themselves artistically, creatively. The principles of gifting, self-expression, and decommodification were highly motivating.

The "gift economy" is difficult to describe. Imagine your extended family getting together once a year for a holiday, and you all bring potluck food and you all help with the dishes. You might give each other gifts. If you receive something back you're thrilled, you're grateful. But you really enjoy making

the food, doing the dishes, “doing” for your extended family. The festival feels like a forty-thousand-person extended family. That’s the gifting principle.

I see a great deal of generosity in the mediation community. At least where I live, most mediators do pro bono work and employ their skills in their communities and churches; mediators continuously do presentations for other mediators to share what they’ve learned. Mediation provides disputants an opportunity to speak for themselves and in their own voice, in contrast to legal processes where a lawyer speaks for them, or asks carefully programmed questions to guide their responses. Speaking for yourself in this context might be considered radical self-expression.

When I mention decommodification, I’m thinking of how disputes are often commodified. Consider a personal injury case, for example. If my kid falls off the bars in gym class, I can sue the school for some amount of money. Should we reach a settlement, I will sell off my right to sue them. The injury, the pain, have been commodified into money.

There’s a long-standing practice of doing evaluative settlement conferences under the title of mediation. The parties seek a mediator who knows the value of their type of case, knows the market worth of their insult or injury. The mediator functions like an art appraiser: “What’s this painting worth?”

I prefer to see mediation as an opportunity for parties in the midst of conflict to see the person on the other side of the table as a genuine human being with a different point of view. Possibly they may come to understand that the other person didn’t intentionally harm them. Sometimes this is a messy emotional experience, where parties recognize the fault on either or both sides, which lets them move through anger or grief. Ideally mediation is not about risk management, or turning grief or anger into money.

**TH:** If those are the principles that constitute the why behind your booth, which ones inform the how of your process?

**RK:** Let me invite you into the booth, next to me, to see how self-reliance and immediacy are manifest there.

I believe radical self-reliance is the notion of [Professor Robert] Baruch Bush’s “empowerment” value [Bush and Folger, 1994]. Mediation is about self-determination, and self-determination is achieved when the participants realize they have the ability to negotiate a voluntary resolution between themselves. And his ideal is that parties realize they don’t need a mediator the next time they have friction between them.

Immediacy speaks to how you need to be flexible and intuitive as a mediator, and the process needs to be fluid. You can have steps, a model, a game plan you think you’ll be working from, but after the first ten minutes, the bull’s going to leave the chute and you just need to hang on. Being present with parties, observing them to know whether they’re sad or angry, or needing more information, or about to walk out—this speaks to the principle that skillful mediation is knowing where the mediation needs to go. And it’s the opposite of following a game plan or a recipe.

**TH:** If skillful mediation is about responding to the parties, and not about some transferable knowledge like a process or a framework, then why do we insist on training?

**RK:** I believe we can train and learn an enormous number of useful recipes, of theoretical understandings, strategies, and specific techniques. I like to think of basketball. You need to practice different plays with your teammates, your shooting, your dribbling. But what’s going to be happening

in the split-second decision making of a real game depends on what all ten people are doing in that moment. This is pretty different than standing and practicing your shooting ability.

Responding intuitively to the patterns of those ten people on the court is what you get from training and experience. If you have to stop and think about it, it's probably already too late.

**TH:** You mention training and experience. Setting aside Burning Man for a moment, how are new mediators supposed to gain experience mediating?

**RK:** Look up mediation in the dictionary: "an intercession for the purpose of helping others settle their disputes." When I train mediators, I ask my students to think of all the times they've helped others to settle their disputes. They gain the confidence of realizing they've done this for years.

If you're scared to death as a mediator, you'll do a lousy job. Parties are counting on you to bring all that skill and experience into the room, not leave it at the door. I ask my students to turn to each other and say sincerely, "I've been mediating for years."

After we conduct role-play simulations, we don't give what some call "constructive feedback" in front of the class. Instead mediators are asked to identify for everyone one thing they felt comfortable doing or would do again. Then disputants are asked, what's another thing the mediator did that worked for your character? So in debriefing any role play, the class gets to hear two dozen things that worked, and people realize there's a lot of skill in the room. Students gain both the skills and the confidence to be mediators. At the end of the class I urge people to go out and be nosy peacemakers in any setting where they hear of a dispute.

**TH:** Thanks for that insight. Do any of the other principles resonate with you, in terms of mediation?

**RK:** The "participation" principle is so important in mediation. At Burning Man, it was formerly known as "no spectators," and is very similar to radical inclusion. It fits mediation in a couple ways, both in terms of having disputants at the center of the process, as well as having mediators engage in improving the field.

My view of mediation is that everybody who comes to a mediation can play a valuable part. I feel this way about the field, too. I'd like mediators to think, "I've got a piece of how we might move forward." Put in your contribution. Talk to a new group about mediation. Invent a new approach or technique, and tell other mediators how it worked. Serve on the board of an ADR organization.

**TH:** Speaking of participation, you mentioned recently that you're hoping to enlist others to take turns staffing the booth this year. What motivated that change?

**RK:** There was a lot of work in setting up and taking down the booth each day in addition to providing services. It tied me up for significant periods of time every year. Fortunately, several colleagues from the Bay Area volunteered to take shifts mediating. I also left the booth set up. It worked out very well.

**TH:** Both your process and the Burning Man context suggest a level of informality. How might this process function in a more formalized setting?

**RK:** I've used it in a number of training settings. It serves well to train mediators in listening, in actively facilitating problem solving. I think it would work well in a small claims court with severe time constraints.

**TH:** Do you have any concerns about this step of sharing the booth leading to some form of routinization, or even institutionalization?

**RK:** I think that would be wonderful. I was looking for some sound way to try out this process and see if it worked and pass it on to other people. One of my students set up my booth and signs at the local farmer's market and offered drop-in mediation with this process. It worked wonderfully and even led to paying cases for her.

**TH:** I understand Burning Man is thought of by many as an arts event, featuring large-scale outdoor sculptures, performances, costumes, and the like. I've heard mediation described as more art than science. Is your mediating at Burning Man in some sense art?

**RK:** I treated the development of my entire mediation practice as an art project, with creativity at the heart of it. I've learned as much as I could, attended several hundred trainings and workshops on mediation, and continue to experiment with different approaches and techniques. There are many parallels to an artist's career. Artists are free to, and expected to, share their work with the community in some way. Gaining a personal reputation, a known name, is key to being successful as an artist or a mediator. So to me, the artistic nature of Burning Man fit very well with my approach to building a professional practice and building the field of mediation.

**TH:** What would you offer as a conclusion for this interview?

**RK:** The creativity that is central to the festival is also available to conflict resolvers. I still think there's enormous room for creativity in this field. I encourage mediators to take the "no spectators" principle to heart, and to work on the development of new models of practice that help realize the field's promise and value.

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## Biography

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### [Tim Hedeem](#)

**Timothy Hedeem** Timothy Hedeem is a researcher, trainer, and professor of dispute resolution at Kennesaw State University, Georgia. He serves on the editorial board of *Conflict Resolution Quarterly*, as chair of the American Bar Association Section of Dispute Resolution's Community-based and Peer Mediation Committee, and was past chair of the National Association for Community Mediation.



Tim's articles have appeared in Mediation Quarterly, Teaching Sociology, and the Penn State Law Review, Conflict Resolution Quarterly, The Sociological Quarterly, and Justice System Journal, and Family Court Review.

[Ron Kelly](#) is one of the principal architects of California Mediation law, and a founder of the California Dispute Resolution Council and the Northern California Mediation Association. He advises organizations and governmental entities on the formation of ADR law and policy. He teaches and trains through many universities and associations. The winner of seven major awards from ADR professional organizations, he mediates and arbitrates cases through his Berkeley office.



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