

ASPEN CASEBOOK SERIES

*MENKEL-MEADOW
LOVE
SCHNEIDER*

MEDIATION
Practice, Policy, and Ethics

*Second
Edition*



Wolters Kluwer
Law & Business

ASPEN CASEBOOK SERIES

MEDIATION

Practice, Policy, and Ethics

Second Edition

Carrie J. Menkel-Meadow

Chancellor's Professor of Law and Political Science
University of California, Irvine Law School and

A.B. Chettle, Jr. Professor of Law, Dispute Resolution and Civil Procedure
Georgetown University Law Center

Lela Porter Love

Professor of Law and Director, Kukin Program for Conflict Resolution
and the Cardozo Mediation Clinic

Benjamin N. Cardozo Law School,
Yeshiva University

Andrea Kupfer Schneider

Professor of Law and Director, Dispute Resolution Program
Marquette University Law School



Wolters Kluwer
Law & Business

Copyright © 2013 CCH Incorporated.

Published by Wolters Kluwer Law & Business in New York.

Wolters Kluwer Law & Business serves customers worldwide with CCH, Aspen Publishers, and Kluwer Law International products. (www.wolterskluwerlb.com)

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at www.wolterskluwerlb.com, or a written request may be faxed to our permissions department at 212-771-0803.

To contact Customer Service, e-mail customer.service@wolterskluwer.com, call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Wolters Kluwer Law & Business
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-0262-4

Library of Congress Cataloging-in-Publication Data

Menkel-Meadow, Carrie.

Mediation : practice, policy, and ethics / Carrie Menkel-Meadow, Chancellor's Professor of Law, University of California, Irvine School of Law; Lela Porter Love, Benjamin N. Cardozo Law School, Yeshiva University; Andrea Kupfer Schneider, Marquette University Law School.—Second Edition.

pages cm.—(Aspen casebook series)

Includes index.

ISBN 978-1-4548-0262-4

1. Dispute resolution (Law)—United States. 2. Mediation—United States. I. Love, Lela Porter, 1950- II. Schneider, Andrea Kupfer. III. Title.

KF9084.M46 2013

347.73'9—dc23

2013022547



**SUSTAINABLE
FORESTRY
INITIATIVE**

Certified Sourcing

www.sfiprogram.org
SFI-01234

SFI label applies to the text stock

About Wolters Kluwer Law & Business

Wolters Kluwer Law & Business is a leading global provider of intelligent information and digital solutions for legal and business professionals in key specialty areas, and respected educational resources for professors and law students. Wolters Kluwer Law & Business connects legal and business professionals as well as those in the education market with timely, specialized authoritative content and information-enabled solutions to support success through productivity, accuracy and mobility.

Serving customers worldwide, Wolters Kluwer Law & Business products include those under the Aspen Publishers, CCH, Kluwer Law International, Loislaw, ftwilliam.com and MediRegs family of products.

CCH products have been a trusted resource since 1913, and are highly regarded resources for legal, securities, antitrust and trade regulation, government contracting, banking, pension, payroll, employment and labor, and healthcare reimbursement and compliance professionals.

Aspen Publishers products provide essential information to attorneys, business professionals and law students. Written by preeminent authorities, the product line offers analytical and practical information in a range of specialty practice areas from securities law and intellectual property to mergers and acquisitions and pension/benefits. Aspen's trusted legal education resources provide professors and students with high-quality, up-to-date and effective resources for successful instruction and study in all areas of the law.

Kluwer Law International products provide the global business community with reliable international legal information in English. Legal practitioners, corporate counsel and business executives around the world rely on Kluwer Law journals, looseleafs, books, and electronic products for comprehensive information in many areas of international legal practice.

Loislaw is a comprehensive online legal research product providing legal content to law firm practitioners of various specializations. Loislaw provides attorneys with the ability to quickly and efficiently find the necessary legal information they need, when and where they need it, by facilitating access to primary law as well as state-specific law, records, forms and treatises.

ftwilliam.com offers employee benefits professionals the highest quality plan documents (retirement, welfare and non-qualified) and government forms (5500/PBGC, 1099 and IRS) software at highly competitive prices.

MediRegs products provide integrated health care compliance content and software solutions for professionals in healthcare, higher education and life sciences, including professionals in accounting, law and consulting.

Wolters Kluwer Law & Business, a division of Wolters Kluwer, is headquartered in New York. Wolters Kluwer is a market-leading global information services company focused on professionals.

For our students—the next generation of lawyers and mediators, who will be better prepared to seek more innovative processes and more creative solutions to legal and human problems.

And for those pioneers—parties, mediators, and lawyers—who have used mediation to craft a better future for families, workplaces, communities, and nations.

Preface to the Second Edition

Since the publication of the first edition of *Mediation: Practice, Policy, and Ethics* in 2006, the use of mediation has continued to expand, in many different contexts. In addition, there continues to be exponential growth in writing about mediation, scholarship, both critical and supportive, skills and practice based, new policy debates, some new empirical research and attempts to evaluate the efficacy and efficiency of mediation, as it is used in so many different settings, and more and more court decisions and some efforts (mostly outside of the United States) to “regulate” mediation. (See the European Directive on Mediation for cross-border commercial matters from 2008 and *Mediation: Principles and Regulation in Comparative Perspective* (Hoft & Steffek, 2012).) Financial cutbacks to courts throughout the United States, at both federal and state levels is also fueling more usage of various forms of “A” (alternative/appropriate) dispute resolution, of which mediation offers the greatest party control in both process and substantive choices. Mediation continues to be combined with many other processes to hybridize and transform the structures of process and participation in dispute resolution. And the continuing international crises between and within states also continues the need for and interest in mediation as an effective method of conflict resolution, management or reduction.

This new edition of the book updates the first edition in several ways. We have, of course, added new textual, decisional and regulatory material. We have added material on newer forms of mediative dispute resolution, including on-line dispute resolution, collaborative law, multi-party consensus building and more up to date examples of mediation’s promises and issues (see e.g., material on the political conflicts surrounding adoption of the Affordable Health Care Act and mediation’s use in transactional and transnational contexts). With the publication of many new books on mediation (e.g., *Stories Mediators Tell*, (Galton & Love, eds. 2012), *Perceptions in Litigation and Mediation: Lawyers, Defendants, Plaintiffs and Gendered Parties* (Relis, 2009), *Challenging Conflict: Mediation Through Understanding* (Friedman & Himmelstein, 2008), and *Mediation Ethics* (Waldman, ed. 2010), we have new insights

into practice and skills issues, ethical dilemmas, and the empirically differentiated use of and appreciation for mediation. We have added important new material here on mediating multi-culturally, the roles of the representative in mediation, and concerns by many that mediation is being co-opted by the larger legal and adversarial system in which it is often located.

We have changed the structure of the book somewhat, substituting “Problem Boxes” for the long questions and editor’s comments and notes of the first edition. This is intended to guide both students and teachers to integrate and use each reading in the book—to immediately consider its theoretical and practical significance and to have students immediately apply their knowledge to consider important mediation practice, policy and ethical concerns. Students are asked to answer questions about the readings, prepare a mediation statement, consider alternative interventions, design dispute processes, respond to an ethical dilemma, and choose appropriate ways of behaving, from a client, representative or mediator perspective. Combined with the extensive role plays provided in the Teacher’s Manual, this is intended to make this book appropriate for active learning, whether in a full semester course, seminar, intensive workshop, clinic, training or other learning settings. The authors have all used this book in a variety of settings not only in their own law school teaching in the United States, but also in the growing number of places outside the United States they teach mediation to lawyers, students, diplomats, political officials, military and ordinary citizens (now on six different continents!).

The material is presented in three separate sections – Foundations of Mediation (introductions to conflict and conflict resolution, and negotiation), the Process of Mediation (skills for mediators, representatives and negotiators in mediation, descriptions of actual mediations, confidentiality, ethical, legal and policy issues) and Applications of the Mediation Process (international, hybrid forms, multi-party and complex disputes, counseling and advising about mediation and other dispute resolution processes, dispute system design, and an intensive study of critiques and evaluations of the mediation process). Astute readers will note we have changed the order and organization of things from the first edition in subtle ways to reflect the comments of students, mediators and users of the first edition (e.g., a separate chapter on facilitation and consensus building). We have tried to respond to some of the comments of prior users (and our own experiences), hoping that we are providing a text that is rich in theory and foundational matters but clear in skills and practice information to guide both the new mediator and the seasoned mediator seeking guidance about difficult issues (e.g., impasses, whether to caucus or not, power differentials in mediation, and both appropriate and less appropriate uses of adaptations of the mediation process).

We are strong believers in the power or “magic” of mediation to “reorient the parties” to each other and to themselves – to come to understand better what conflict can do to us (both productively and less productively) and to others and that resolving or simply “handling” conflict effectively are among human beings’ greatest achievements, when it works! So, as law professors and mediators of collective decades of experience, we continue to believe that learning how to mediate, advise clients to mediate, and to be in a mediation as a party or representative is essential to any legal (or any form of) education. We continue to hope that users of this book

will make the world a better and safer place and we are heartened by seeing what our many many students and colleagues have done in the last few decades as mediation has taken its place as one of the major ways our legal, international, and community systems resolve conflicts, both outside and inside more traditional justice institutions.

★ ★ ★

We continue to be appreciative of our institutional homes for support: University of California, Irvine, Georgetown University Law Center, Benjamin N. Cardozo Law School, and Marquette University Law School. Lela Love is grateful to the Kukin Program for Conflict Resolution at Benjamin Cardozo School of Law/Yeshiva University, Andrea Kupfer Schneider for her Dispute Resolution Program at Marquette, and Carrie Menkel-Meadow adds gratitude for her new colleagues in conflict resolution and political science at the University of California, Irvine and continued support from the Conflict Resolution program in the Government department at Georgetown University. In addition, we thank our many students in Asuncion, Paraguay, Bethlehem (West Bank), Bilbao, Budapest, Buenos Aires, Haifa, London, Paris, Fribourg (Switzerland), Florence, Managua, Mexico City, Melbourne, San Jose, Costa Rica, Santiago and Temuco, Chile, Singapore, Toronto, and Beijing, not to mention New York, Milwaukee, Washington, DC, Los Angeles, Malibu, Palo Alto, Irvine, San Francisco, Moscow, Idaho and Moscow, Russia, Boston, Cambridge, and St. Louis, among other places we and others have taught with these materials.

We thank Jean Sternlight, our fellow traveler and co-author of the “big” book (*Dispute Resolution: Beyond the Adversarial Model*, 2nd ed. 2011) which began this family of texts. (Our companion *Negotiation Processes for Problem Solving* 2nd ed. will follow shortly).

We thank our many colleagues who have given us feedback, continue to invite us to conferences to speak, teach and present our work with special thanks to the ABA Section on Dispute Resolution, the Program on Negotiation at Harvard Law School, the Conflict Resolution Center at Stanford Law School, the Saltman Center for Dispute Resolution at the University of Nevada at Las Vegas, and the Rethinking Negotiation Teaching Collaborative (James Coben, Christopher Honeyman and Giuseppe De Palo). Special thanks from Carrie to the Senior Mediators group, including Larry Susskind, Frank Sander, Howard Bellman, Margaret Shaw, Howard Gadlin, Steve Goldberg, Nancy Rogers, Susan Podziba, John Barkat, Melanie Greenberg, and others, sadness at the passing of dear Wallace Warfield, and to Carol Liebman, Stephanie Smith, Jan Martinez, Gary Friedman, Jack Himmelstein, Amira Dotan, fellow teachers, trainers and mediators and most importantly, dear friends; and to Peter Reilly, Clark Freshman, Bob Bordone, Carlos Ruffinelli, Renzo Parodi, Ana Silva, Ana Carolina Viana and other “mentees” who are now colleagues and peers who have taught as much as they have learned. Thanks from Lela to her teaching colleagues, Hal Abramson, James Coben, Nancy Dubler, Christian Hartwig, Sharon Press, Joseph Stulberg and Dan Weitz, who have provided many insights and much support. Thanks from Andrea Schneider to Michael Moffitt, Nancy Welsh, Jennifer Brown, Art Hinshaw and Peter Reilly – co-authors on other works – who continue to push us and challenge our thinking.

For the hard work that goes into making any book Carrie thanks research assistants Jean Su, and Peter Waneis at UC Irvine, Char Anderson and Andrew Campbell for administrative assistance and problem solving par excellence, student teaching assistance from Thomas McClain, and for inspiration from Edgar Aguilosocho, Carly Edelstein, Brooke Weitzman and other founders of the Global Justice Summit at UCI, and to the librarians at UCI, especially Melody Lembke and Dianna Sahhar who find all the right things and help fight the fight to purchase real pages as the rest of the world goes digital.

Lela thanks Glen Parker, who served as the Fellow of the Kukin Program at Cardozo, during the production of this book. His edits and insights were wonderful. Professor Lynn Wishart, Cardozo's superb librarian was immensely helpful.

Andrea (and Carrie and Lela) thank Andrea's administrative assistant *extraordinaire*, Carrie Kratochvil – the “other” Carrie on all of these projects – for her work, organization, and ability to keep all things moving so smoothly.

We all thank John Devins at Wolters Kluwer for good spirit, guidance, and patience in shepharding us along (again), and Paul Sobel and his team at The Froebe Group for manuscript management.

We especially want to single out those true educators and authors in our midst and on these pages who have given us permission to reprint their words for no or reduced cost (you know who you are and you are not the major publishers in our field except for PON and a few generous others). We hope to return the favor (reciprocal concessions?) if you ever ask us.

Once again, we end this beginning by thanking each other. What a collaboration over ten years now for us to read, teach and work with each other to deepen our knowledge and experience, to grow new generations of mediators and peace seekers and to practice each day our own versions of the important skills we teach, negotiation, listening, persuading, mediation, teaching and problem solving.

We hope you continue to learn from things in this book and please let us know if you have suggestions and reactions.

In peace,

Carrie Menkel-Meadow
Lela Porter Love
Andrea Kupfer Schneider

August, 2013

Preface to the First Edition

A belief that there is a different and often better sensibility for solving human and social problems inspires this book. We have witnessed, as have many of the authors represented in the text, mediation used to achieve consensual resolution of seemingly intractable problems in ways that are responsive to the relationships and the needs and interests of the parties. We believe that mediation, when properly used, can achieve justice for the parties—a justice distinct from what a court or legislature could provide. For some in our field, this is called self-determination or empowerment; for others, a form of individualized democracy in decision making.

Mediation, or facilitated negotiation, has reached an important point of its development within modern legal institutions and legal education. Where once the adversary model of argument, adjudication, and case analysis comprised the full program of legal processes presented in law schools, a modern evolution from the days of the Legal Process school of the 1950s, through the clinical education movement of the 1960s and 1970s, to the newest legal “movement” of appropriate (or alternative) dispute resolution has expanded the repertoires of modern law students and lawyers. Where once we studied only appellate cases and conceptual analysis of doctrines, we now study the processes of client counseling and interviewing, negotiation, mediation, advocacy, representation, neutraling, facilitation, legislation, policy development, and dispute system design. Not only have the number of processes been expanded, but we now teach with more experiential models, having learned from John Dewey’s pragmatic education theories and the “theories-in-use” of Donald Schön and others, that we learn best about ideas and theories of dispute processing when we are in role and are analyzing what does and can happen.

This book is part of our larger project, *Dispute Resolution: Beyond the Adversarial Model* (Menkel-Meadow, Love, Schneider & Sternlight, 2005), designed to bring the study of “process pluralism” to the modern law student and lawyer, and contains both more and less than the larger text. This volume is explicitly devoted to the study, teaching, and performance of all the roles implicated in the mediation process.

We provide full treatment of a variety of different models of mediation currently being theorized and practiced, encouraging the reader to see the differences and to assess which kinds of mediative processes might be appropriate in different contexts. We also examine, in depth, the different roles in mediation processes — party, representative, and neutral.

Like our larger text, this book is committed to the idea that one must learn about legal and problem-solving processes on various levels at the same time: theory, skills and practices, ethics, policy, and critique. The reader of this book will likely encounter here one of the richest treatments of the field currently available, one incorporating explorations of mediation model variations, legal issues, examples and transcripts of actual mediations, challenging questions of policy and practice to think about, and discussion of some of the leading controversies in the field (such as whether mediation inappropriately “privatizes” public justice).

We begin with the general theory and jurisprudence of conflict resolution, now a multidisciplinary field. We move from foundational principles to the skills needed for mediation, providing both theoretical descriptions and examples of the variety of mediation models currently in use, from facilitative to evaluative to transformative to community-enhancing. We then provide materials and instruction for lawyers or representatives inside the mediation, urging the modern lawyer to think of him/herself as a creative problem solver and not necessarily as an advocate whose job is to maximize gain for one’s own client at the expense or harm of the other party. We then provide material and instruction on the skills necessary for the mediator as third-party facilitator of party communications and negotiations, presenting a wide array of foundational skills and interventions.

After focusing on the theory, practice, and skill sides of mediation we look at a variety of legal, policy, and ethical issues, including the roles of law and justice in mediation, the tensions in the role of the “neutral,” duties or obligations to both the parties in a mediation, and to those who might be affected by any mediation’s outcome, legal liability and malpractice, confidentiality, legal immunity, diversity, good-faith participation obligations and requirements, and the ethics of mediation — for mediators, parties, and their representatives.

Like our larger project, this book treats mediation as part of a larger family of dispute resolution and transaction-planning processes. We explore the uses of mediation in a wide variety of contexts (lawsuits, contracts, community disputes, public policy formation, and international relations). We also explore how mediation has been combined with other processes to create a host of modern hybrid forms for use in legal disputes and decision-making situations. We look at how mediation is used, with great subtlety and complexity, in disputes involving multiple parties and multifaceted issues. We then provide material to help the modern lawyer counsel a client in designing, choosing, planning for, and drafting clauses and rules for these new processes. We ask the reader to think about how mediational processes might be utilized in a wide variety of situations to affect the consciousness and sensibility of guiding how people approach each other when in trouble or pain or when they, more happily, want to build something new. Indeed, we hope that this book will be used to inspire the creation of new mediational processes and applications. We conclude the book with some hard thinking about

and critiques of mediation. What is the role of private and consensual justice in a world that needs the clarity of a rule of law? How is power exercised in mediation outside of formal structures and institutions? Has mediation been co-opted by its increasing use in the formal justice system? How can we evaluate the promises made by mediation proponents or detractors? Can we use mediation to achieve peace and justice?

The authors of this book are committed to the idea that we can learn to get along with one another in this increasingly diverse world if we approach one another with deep respect and care and some ideas about reciprocity, active listening, and problem solving. We are also rigorous realists — if mediation is to offer a better mode of dispute resolution and problem solving, we must also examine how it actually operates and whether, in fact, it delivers on its promises to create peace and justice.

The accompanying Teacher's Manual to this book provides a comprehensive set of exercises, role-plays, and discussion questions for teachers (and students) to explore the material here in great experiential depth. This casebook should also be able to “stand alone” (as we have been conceptualizing it) as a comprehensive and sophisticated description of the field. Two of the present authors were there at the modern “birthing” of this field, and we are proud to be joined by one of the leading scholars of negotiation, foundational to all mediation. All of us participated fully in writing this book, and we hope you will use it in the spirit that moved us: the goal of helping to educate and raise a new generation of lawyers and other professionals as adept at problem solving as they are at advocacy. And, yes, we think this book can be used by both lawyer and non-lawyer mediators and parties.

Footnotes by the authors of this book, in both the excerpts and our text, are marked using symbols. The order of the footnote symbols, if more than one symbol appears on a page, is * † ‡. The original footnote numbering in the excerpts has been retained.

* * *

A few thanks before we get started. . . . We begin with some intellectual thanks to Lon Fuller, who inspired much of our deepest thinking about the purposes of process in general and of mediation in particular. We next thank Jean Sternlight, our coauthor on the larger project, who could not participate in this one (due to her other book on mediation) but who remains with us in spirit.

All of us thank various mentors and colleagues in this work. From Carrie, special thanks to Jack Himmelstein, Howard Gadlin, Howard Lesnick, Larry Susskind, and Gary Friedman, who were there at the beginning, taught me to mediate, and remain my continuing guides; to Carol Liebman and Margaret Shaw for shared mediative collegueship and guidance (as we constituted a first generation of “women mediators”); to Susan Gillig for being the best co-teacher and co-traveler one could have in this journey of pedagogical innovation. To Howard Bellman and Frank Sander for organizing the “Senior Mediators Group,” which has been a touchstone of inspiration for the last ten years. From Lela, special thanks to Josh Stulberg, Jim Coben, Kitty Atkins, Jim Alfini, and Hal Abramson for teaching me so much about mediation and life and helping make many exciting dreams come true. And most of all, to the parties in many mediations who, with courage and persistence, have made all the work worthwhile. From Andrea, special thanks to

Janine Geske, Jay Grenig, Chris Honeyman, and Moira Kelly, for all of their work in mediation and mediation advocacy.

Carrie profoundly thanks her able support team: research assistant extra-ordinaire David Mattingly; administrative assistants Corrie Mathiowetz and Carolyn Howard; research assistants Veronica Teresa Lerma, James Bond, and Jaimie Kent; the faculty production team at Georgetown, Sylvia Johnson, Toni Patterson, and Ronnie E. Rease, Jr. (I promise I will stop killing trees soon!); and Hewlett Fellows, Peter Reilly, and Sara Thacker, who taught with these materials and have been my teaching family the last few years.

Lela thanks her great support team: Roger Deitz, Malte Pendergast-Fischer, Becca Benghiat, Justin Braun, Chris Fugarino, Tracey Pastan, and Daniel Zinn, for their painstaking work on the manuscript; Kaaron Saphir, for dealing with computer glitches and other nightmares; and Harold Abramson, James Kornbluh, Michael Lang, Ray Patterson, Frank Scardilli, Joseph Stulberg, Peggy Sweeney, and Dan Weitz, who have been central and critical pillars of the Cardozo mediation family.

Andrea thanks her fabulous assistant, Carrie Kratochvil, who mediates both the large and small crises in the law school while getting everything done; and her great research assistants, Anna Coyer and Stacey Meyer.

All of us feel enormously grateful to our home institutions, which gave us support in so many different ways: thanks to Deans Judith Areen and Alex Aleinikoff and Associate Dean Vicki Jackson at Georgetown University Law Center (and to the donors of the A.B. Chettle, Jr., Chair in Dispute Resolution and Civil Procedure); and to Carol O'Neil for academic and pedagogical support and interest way beyond the call of duty. Thanks also to Dean David Rudenstein and former Dean Monroe Price at Cardozo School of Law; and thanks to Dean Joseph Kearney and Associate Dean Peter Rofes at Marquette University Law School.

We are also appreciative of the various “pushes” and “pulls” of the Aspen team—Melody Davies, Jay Boggis, Laurel Ibey, Susan Boulanger, Elsie Starbecker (who guided the first volume with care and beauty), Elizabeth Ricklefs, Richard Mixer, and others behind the pages.

We thank the many reviewers of this text, some known to us (Jennifer Gerarda Brown, Ellen Deason, Carol Liebman, Michael Moffitt) and other undisclosed helpers. We hope we have met your needs and answered your concerns.

We thank our families, to whom the larger ADR book was dedicated: Robert Meadow; Peter Popov and Nicole Love Popov; and Rodd, Joshua, Noah, and Zachary Schneider—for their patience, support, and, on very rare occasions, some opportunity to practice our conflict resolution and mediation skills!

And most, we thank our students, who we hope will use these materials to create a better world—one with peace, sensitive and rigorous problem solving, and justice.

Let us know what you think.

*Carrie Menkel-Meadow
Lela Porter Love
Andrea Kupfer Schneider*

December 2005

Acknowledgments

The authors wish to express thanks to the following authors, periodicals, and publishers for their permission to reproduce materials from their publications:

Abel, Richard L., The Contradictions of Informal Justice, in 1 THE POLITICS OF INFORMAL JUSTICE: THE AMERICAN EXPERIENCE 270-272 (Richard L. Abel ed., 1982). Reprinted with permission of Elsevier.

Abramson, Harold I., MEDIATION REPRESENTATION: ADVOCATING AS A PROBLEM-SOLVER IN ANY COUNTRY OR CULTURE 2, 5-6, 9-10 (3d ed. 2013). Reprinted with permission of Wolters Kluwer.

American Bar Association, Alternative Dispute Resolution Section, TASK FORCE ON MEDIATOR CREDENTIALING FINAL REPORT (Aug. 2012). Reprinted with permission of the American Bar Association.

Angier, Natalie, Why We're So Nice: We're Wired to Cooperate, NEW YORK TIMES, July 23, 2002, at 1. Reprinted with permission of The New York Times.

Arnold, Tom, 20 Common Errors in Mediation Advocacy, 13 ALTERNATIVES TO HIGH COST LITIGATION 69, 69-71 (1995). Reprinted with permission of Tom Arnold.

Axelrod, Robert, THE EVOLUTION OF COOPERATION 3, 7-9, 30-31, 40, 54, 110-114, 118-122 (1984). Reprinted with permission of Basic Books, Inc., a member of Perseus Books, L.L.C.

Ayres, Ian, Fair Driving, 104 HARVARD LAW REVIEW 817, 818-819 (1991). Reprinted with permission of the Harvard Law Review.

Bazerman, Max H., and Margaret A. Neale, NEGOTIATING RATIONALLY 9-11, 26-28, 49, 54, 62-63 (1992). Reprinted with permission of The Free Press, a division of Simon & Schuster.

Begley, Sharon, The Stereotype Trap, NEWSWEEK, Nov. 6, 2000, at 66-68. Reprinted with permission of The Newsweek/Daily Beast Company LLC.

Binder, David A., Paul B. Bergman, and Susan C. Price, LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH 3-9, 11-12, 14-15 (2004). Reprinted with permission of West, a Thomson Reuters business.

- Binder, David A., Paul B. Bergman, Susan C. Price, and Paul R. Tremblay**, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 41–43, 48–49, 55–56 (2d ed. 2004). Reprinted with permission of West, a Thomson Reuters business.
- Binder, David A., Paul B. Bergman, Paul R. Tremblay, and Ian S. Weinstein**, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 18–31, 353–368 (3d ed. 2011). Reprinted with permission of West, a Thomson Reuters business.
- Brown, Jennifer Gerarda**, Creativity and Problem Solving, 87 *MARQUETTE LAW REVIEW* 697, 697–705 (2004). Reprinted with permission of Jennifer Gerarda Brown.
- Bush, Robert A. Baruch**, Mediation and Adjudication, Dispute Resolution and Ideology: An Imaginary Conversation, 3 *JOURNAL OF CONTEMPORARY LEGAL ISSUES* 1, 1–6, 12 (1990). Reprinted with permission of the University of San Diego.
- Bush, Robert A. Baruch, and Joseph P. Folger**, *THE PROMISE OF MEDIATION: THE TRANSFORMATION APPROACH TO CONFLICT* 45–46, 55, 65–66 (revised ed. 2005). Reprinted with permission of Jossey-Bass, a subsidiary of John Wiley & Sons, Inc.
- Center for Public Resources**, CPR–GEORGETOWN MODEL RULE 4.5.4: CONFLICTS OF INTEREST. Reprinted with permission of Center for Public Resources.
- Coben, James R.**, Mediation's Dirty Little Secret: Straight Talk About Mediator Manipulation and Deception, 2 *JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION IN EMPLOYMENT* 4, 4–6 (2000). Reprinted with permission of the Journal of Alternative Dispute Resolution in Employment, Wolters Kluwer, and James R. Coben.
- Coleman, Peter T., and Morton Deutsch**, Some Guidelines for Developing a Creative Approach to Conflict, in *THE HANDBOOK OF CONFLICT RESOLUTION* 355–357, 360–363 (2000). Reprinted with permission of Jossey-Bass, a subsidiary of John Wiley & Sons, Inc.
- Cooley, John W., and Lela P. Love**, Midstream Mediator Evaluations and Informed Consent, *DISPUTE RESOLUTION MAGAZINE*, Winter 2008, at 13. Reprinted with permission of the American Bar Association.
- Craver, Charles B., and David W. Barnes**, Gender, Risk Taking, and Negotiation Performance, 5 *MICHIGAN JOURNAL OF GENDER AND LAW* 299, 320–321, 346–347 (1999). Reprinted with permission of Charles B. Craver.
- Curran, Daniel, James K. Sebenius, and Michael Watkins**, Case Analysis: Two Paths to Peace: Contrasting George Mitchell in Northern Ireland with Richard Holbrooke in Bosnia–Herzegovina, 20 *NEGOTIATION JOURNAL* 513–531 (Oct. 2004). Reprinted with permission of Blackwell Publishing/Negotiation Journal.
- Delgado, Richard, Chris Dunn, Pamela Brown, Helena Lee, and David Hubbert**, Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution, 1985 *WISCONSIN LAW REVIEW* 1359, 1367, 1375, 1387–1391, 1402–1404 (1985). Copyright © 1985 by the Board of Regents of the University of Wisconsin System. Reprinted by permission of the Wisconsin Law Review.
- Ebner, Noam, Anita D. Bhappu, Jennifer Brown, Kimberlee K. Kovach, and Andrea Kupfer Schneider**, You've Got Agreement: Negoti@ting Via Email, in *RETHINKING NEGOTIATION TEACHING* 91, 94–106 (Christopher Honeyman, James Coben, and Giuseppe de Palo eds., 2009). Reprinted with permission of Noam Ebner, Anita D. Bhappu, Jennifer Brown, Kimberlee K. Kovach, and Andrea Kupfer Schneider.

- Fisher, Roger, Elizabeth Kopelman, and Andrea Kupfer Schneider**, BEYOND MACHIAVELLI: TOOLS FOR COPING WITH CONFLICT 32-34, 123-131 (1994). Reprinted with permission of Harvard University Press.
- Fisher, Roger, William Ury, and Bruce Patton**, GETTING TO YES 4-6, 8-9, 9-14, 85-88 (2d ed. 1991). Reprinted with permission of Houghton Mifflin Harcourt.
- Fiss, Owen M.**, Against Settlement, 93 YALE LAW JOURNAL 1073, 1075-1078, 1082, 1085-1086, 1087-1090 (1984). Reprinted with the permission of The Yale Law Journal Company and William S. Hein Company from The Yale Law Journal, Vol. 93, pages 1073-1090.
- Folger, Joseph P., and Robert A. Baruch Bush**, Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice, 13 MEDIATION QUARTERLY 263, 264-267 (1996). Reprinted with permission of Mediation Quarterly and Jossey-Bass, a subsidiary of John Wiley & Sons, Inc.
- Follett, Mary Parker**, Constructive Conflict, in MARY PARKER FOLLETT—PROPHET OF MANAGEMENT: A CELEBRATION OF WRITINGS FROM THE 1920s at 67-69, 75, 77, 79, 82, 84-86 (1995). Reprinted with permission of the Harvard Business School Press.
- Friedman, Gary, and Jack Himmelstein**, CHALLENGING CONFLICT: MEDIATION THROUGH UNDERSTANDING at xxvii, xxviii (2008). Reprinted with permission of the American Bar Association.
- Friedman, Gary, and Jack Himmelstein**, The Loop of Understanding, in CHALLENGING CONFLICT: MEDIATING THROUGH UNDERSTANDING (2008). Reprinted with permission of the American Bar Association.
- Fuller, Lon L.**, Collective Bargaining and the Arbitrator, in COLLECTIVE BARGAINING AND THE ARBITRATOR'S ROLE: PROCEEDINGS OF THE FIFTEENTH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS 8, 29-30, 32-33 (Mark L. Kahn ed., 1962). Reprinted with permission of Bloomberg BNA.
- Fuller, Lon L.**, Mediation—Its Forms and Functions, 44 SOUTHERN CALIFORNIA LAW REVIEW 305, 307-309, 325-327 (1971). Reprinted with permission of the Southern California Law Review, University of Southern California.
- Galton, Eric**, Mediation of Medical Negligence Claims, 28 CAPITAL UNIVERSITY LAW REVIEW 321, 324-325 (2000). Reprinted with permission of the Capital University Law Review.
- Galton, Eric**, A Meeting of Strangers, in STORIES MEDIATORS TELL (Eric Galton and Lela Love eds., 2012). Reprinted with permission of the American Bar Association.
- Gifford, Donald G.**, A Context-Based Theory of Strategy Selection in Legal Negotiation, 46 OHIO STATE LAW JOURNAL 41, 52-54 (1985). Reprinted with permission of the Ohio State Law Journal and Donald G. Gifford.
- Gold, Julia Ann**, ADR Through a Cultural Lens: How Cultural Values Shape Our Disputing, 2005 JOURNAL OF DISPUTE RESOLUTION 289, 292-302. Reprinted with permission of the Journal of Dispute Resolution, University of Missouri-Columbia.
- Greatbatch, David, and Robert Dingwall**, Selective Facilitation: Some Preliminary Observations on a Strategy Used by Divorce Mediators, 23 LAW AND SOCIETY REVIEW 613, 613-618, 621-623, 626-629, 635-637, 639 (1989). Reprinted with permission of Blackwell Publishing/Law and Society Review.
- Grillo, Trina**, The Mediation Alternative: Process Dangers for Women, 100 YALE LAW JOURNAL 1545, 1549-1550, 1582-1583, 1585-1587 (1991). Reprinted by permission of The Yale Law Journal Company and William S. Hein Company from The Yale Law Journal, Vol. 100, pages 1545-1610.

- Gunning, Isabelle R.**, Diversity Issues in Mediation: Controlling Negative Cultural Myths, 1995 JOURNAL OF DISPUTE RESOLUTION 55, 83-86. Reprinted with permission of the Journal of Dispute Resolution, University of Missouri-Columbia, Center for the Study of Dispute Resolution.
- Harter, Philip J.**, Negotiating Regulations: A Cure for Malaise, 71 GEORGETOWN LAW JOURNAL 1, 7, 28-31, 112-113 (1982). Reprinted with permission of the Georgetown Law Journal.
- Hofstadter, Douglas R.**, METAMAGICAL THEMAS: QUESTING FOR THE ESSENCE OF MIND AND PATTERN 716 (1985). Reprinted with permission of Basic Books, Inc., a member of Perseus Books, L.L.C.
- Hyman, Jonathan M., and Lela P. Love**, If Portia Were a Mediator: An Inquiry into Justice in Mediation, 9 CLINICAL LAW REVIEW 157, 158-174 (2002). Reprinted with permission of the Clinical Law Review, New York University.
- Kahneman, Daniel, and Amos Tversky**, Conflict Resolution: A Cognitive Perspective, in BARRIERS TO CONFLICT RESOLUTION 54-55 (Kenneth Arrow et al. eds., 1995). Reprinted with permission of W.W. Norton & Company, Inc.
- Kakalik, James S., Terence Dunworth, Laural A. Hill, Daniel McCaffrey, Marian Oshiro, Nicholas M. Pace, and Mary E. Vaiana**, AN EVALUATION OF MEDIATION AND EARLY NEUTRAL EVALUATION UNDER THE CIVIL JUSTICE REFORM ACT at v, xxvii-xxxiv (1996). Reprinted with permission of Rand Corporation.
- Kichaven, Jeff**, APOLOGY IN MEDIATION (2003). Reproduced with permission of the publisher, International Risk Management Institute, Inc., Dallas, Texas, from IRMI.COM. Further reproduction prohibited.
- Korobkin, Russell**, A Positive Theory of Legal Negotiation, 88 GEORGETOWN LAW JOURNAL 1789, 1791-1794, 1794-1798, 1799, 1816-1817, 1821, 1825, 1829 (2000). Reprinted with permission of Russell Korobkin.
- Korobkin, Russell, and Chris Guthrie**, Psychological Barriers to Litigation Settlement: An Experimental Approach, 93 MICHIGAN LAW REVIEW 107, 144-146 (1994). Reprinted with permission of Russell Korobkin.
- Kruse, Katherine R.**, Beyond Cardboard Clients in Legal Ethics, 23 GEORGETOWN JOURNAL OF LEGAL ETHICS 103, 104, 127-128, 133 (2010). Reprinted with permission of the Georgetown Journal of Legal Ethics.
- LaFree, Gary, and Christine Rack**, The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases, 30 LAW AND SOCIETY REVIEW 767, 768-772, 788-793 (1996). Reprinted with permission of Blackwell Publishing/Law and Society Review.
- Lax, David A., and James K. Sebenius**, THE MANAGER AS NEGOTIATOR: BAR-GAINING FOR COOPERATION AND COMPETITIVE GAIN 30, 33, 38-40, 89-90 (1986). Reprinted with permission of The Free Press, a division of Simon & Schuster.
- Lederach, John Paul**, Cultivating Peace: A Practitioner's View of Deadly Conflict and Negotiation, in CONTEMPORARY PEACEMAKING: CONFLICT, VIOLENCE, AND PEACE PROCESSES 33-35, 37 (John Darby and Roger MacGinty eds., 2003). Reprinted with permission of Palgrave Macmillan.
- Lehman, Warren**, The Pursuit of a Client's Interest, 77 MICHIGAN LAW REVIEW 1078, 1079, 1088-1090 (1979). Reprinted with permission of Warren Lehman.