CPR

International Institute for
Conflict Prevention & Resolution

The CPR Recommended ADR Library List

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THE CPR RECOMMENDED ADR LIBRARY LIST

A readily accessible resource list that combines theory and practice articles, books and surveys in the ADR field is an invaluable tool for counsel. CPR has created – and will continue to supplement on an ongoing basis – such a list: The CPR Recommended ADR Library List.

CPR offers a wide array of high quality and practice-oriented publications and videos. The list below supplements the CPR publications with contributions that have been widely respected in the field. In fact, many of the publications are prior CPR Awards Winners.

The CPR Recommended ADR Library List is divided into the following categories:

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CPR INSTITUTE COMPREHENSIVE PRACTICE TOOLS

The CPR Practice Tools provides practitioners with a unique library of ADR, including dispute resolution procedures, contract clauses, forms and bibliographies.

Our leading Practice Tools are:

- ADR Glossary
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- ADR Suitability Guide
- Arbitration Rules
- International ADR
- Mediation Procedure
- Minitrial
- ADR Systems Design

NEGOTIATION

Adler, Robert S. and Elliot M. Silverstein. "When David Meets Goliath: Dealing with Power Differentials in Negotiation," *5 Harvard Negotiation Law Review* 1 (2000) (2000 CPR Award Winner)

The article explores the concept of power disparities in negotiation. Examined are the concept of power, identification of effective sources of power, and a review of legal protections available to those who face disparities of power. Suggestions are offered that bargainers may find useful in negotiating situations involving power disparities.

Birke, Richard, and Craig R. Fox. "Psychological Principles in Negotiating Civil Settlements," *4:1 Harvard Negotiation Law Review* 1 (Spring 1999) (1999 CPR Award Winner)

The article examines automatic and subconscious psychological obstacles to the rational resolution of legal disputes. The authors present hypothetical situations and describe the psychological principles that are likely to impair a rational resolution. For each hypothetical, prescriptions for remediation to overcome the impairment are offered.

Cohen, I. Glenn "Negotiating Death: ADR and End of Life Decisionmaking," Harvard Law School Interdisciplinary Seminar on Negotiation and Dispute Resolution (2002-2003) (2003 CPR Award Winner)

This article explores the possibility of a middle-ground answer to the question of who should be able to make end-of-life decisions. The article argues that negotiation theory and ADR models are powerful tools for the health care system to fashion better dispute resolution. It also analyzes the problems (philosophical, sociological, and legal), that arise in attempting to implementing such a system. The article focuses on cessation or refusal of treatment, though many of the conclusions drawn may be applicable to cases of "active euthanasia" and "physician assisted suicide".

Cohen, Jonathan R. "Advising Clients to Apologize," *72:4 Southern California Law Review* (May 1999) (1999 CPR Award Winner)

The article examines the value of apology in avoiding and resolving disputes. Practical advice to lawyers on how to counsel their clients with regard to apologies is given.

Cohen, Jonathan R. *When People Are the Means: Negotiating With Respect*, XIV Geo. J. Legal Ethics 739 (2001)

On the subject of negotiation ethics much has been written on the topics of disclosure, deception and fairness. In this article, Professor Jonathan Cohen focuses on another aspect of negotiation ethics, namely the ethics of orientation. He writes that in negotiation situations there is a tension inherent in the fact that the other party is both a possible means to one's ends and also a human being. He argues that, as a human being with fundamental dignity, the other party should be respected both in direct principal-to-principal negotiations and in legal negotiations conducted through lawyers and addresses and dismisses common counter-arguments to this proposition. He goes on to assert that current codes of professional legal ethics do not sufficiently address this issue and that education is the most promising path for promoting such ethics within the legal profession and elsewhere.

Danny Ertel & Mark Gordon, *The Point Of The Deal: How To Negotiate When Yes Is Not Enough*, Harvard Business School Press (2007) (CPR 2007 Book Award Winner)

A disturbingly high number of alliances fail after negotiators reach a final agreement. *The Point of the Deal* surmises that the reason behind this phenomenon is the inadequate importance negotiating parties place on post-deal implementation. In providing a paradigm to avoid this failure, the book teaches negotiators the necessity of approaching the final deal as only a means to an end, with the ultimate goal being effective implementation of the negotiated contract. Teachings include transitioning from "yes" to execution, preventing your counterpart from overcommitting and consulting company decision-makers to determine what is necessary and realistic to carry out the final deal.

Fisher, Ury & Patton. *Getting to Yes*. (Second Ed., 1991, Penguin Books)

A classic in the negotiation field, "Getting to Yes" offers a concise, step-by-step, proven strategy for coming to mutually acceptable agreements in a variety of conflicts.

Fisher, Roger and Daniel Shapiro, *Beyond Reason: Using Emotions as You Negotiate*, Viking Press/Penguin Group, New York, October 2005 (2005 Award Winner)

This book is directed to the question, how one should cope with the interacting, and ever-changing emotions, when negotiating with others. It describes major obstacles a person might face as they deal with emotions and at the same time it gives that person a practical framework to overcome these obstacles. One can avoid reacting to scores of constantly changing emotions and turn their attention to five core concerns that are responsible for many, if not most, emotions in a negotiation. The five core concerns that the authors identify are appreciation, affiliation, autonomy, status and role. The book focuses on how to use these core concerns to generate helpful emotions in one self and in others. It helps one gauge the needs of another negotiator, set the emotional tone of the discussion, and reach a mutually acceptable agreement. A person will be shown how to turn a disagreement into an opportunity of mutual gain. The authors also have added a personal dimension to their writing. They have included a number of examples drawn from their personal lives as well as from their involvement for many years in the field of negotiation.

Freshman, Clark, Adele Hayes, Greg Feldman. *The Lawyer-Negotiator as Mood Scientist: What We Know and Don't Know About How Mood Relates to Successful Negotiation*, 1 J. Disp. Res. 1 (2002)

Does mood shape lawyer success in negotiation? Can lawyers improve negotiations by understanding and managing the role of mood? This article explores possible answers to both questions by looking at the ways positive mood may help negotiation, drawing on social psychology studies and questioning the degree to which current research actually applies to lawyers. The authors also consider the impact of mild mood changes on people generally, and on lawyers. The need for more research in this area is outlined, and the article concludes by offering preliminary suggestions for possible strategies for lawyers to manage mood and succeed better in negotiations.

Gelfand, Michele J. & Jeanne M. Brett (editors), *The Handbook of Negotiation and Culture*. (Stanford University Press, 2004)

This book contains an up-to-date summary of most of the research in the field of negotiation and many theory-driven ideas for new research. A useful tool for practitioners in all areas of dispute resolution, the book shows clearly that an understanding of the impact of culture is essential to an understanding of negotiation and provides information about new directions that are shaping dispute resolution and culture.

Gifford, Donald G. "A Context-Based Theory of Strategy Selection in Legal Negotiation," *46 Ohio State Law Journal* 41 (1985) (1985 CPR Honorable Mention)

The article examines three different negotiating strategies - competitive, cooperative, and integrative - and argues that the context of a dispute is an important variable when deciding what negotiation strategy to apply. The author applies his theory to three specific situations: the defense attorney's strategy in plea bargaining, the plaintiff's attorney's negotiation strategy in personal injury cases, and the management attorney's strategy in labor negotiations.

Goodpaster, Gary. "Rational Decision-Making in Problem Solving Negotiation: Compromise, Interest-Valuation, and Cognitive Error," *8:2 The Ohio State Journal on Dispute Resolution* 299 (1993) (1993 CPR Award Winner)

The article reviews the problem-solving model of negotiation with a discussion on how to conceptualize compromises and tradeoffs. After exploring the conceptual side of planning and preparing for problem-solving negotiations, the author examines the human cognitive processes that impair rational decision-making in negotiation.

Guthrie, Chris, *Panacea or Pandora's Box?: The Costs of Options in Negotiation*, 88 Iowa L. Rev. 601 (2003) (2003 CPR Award Winner)

The purpose of this article is to describe some of the predictable problems that may arise as a consequence of option generation in negotiation. Relying on new and existing experimental research and 'real-world' empirical evidence, the article identifies four potential costs associate with option generation which, taken together, stand for the proposition that negotiators who heed the option-generation prescription may be more likely than those who ignore it to enter into inferior, unsatisfactory agreements. The author explores options for negotiators to reap the benefits of option generation without incurring the potential costs. The article makes a three-part argument about the constructive role that lawyer-negotiators, as opposed to non-lawyer-negotiators, can play in maximizing benefits in complex negotiations.

Korobkin, Russell, co-authored by Jonathan Zasloff, "Roadblocks to the Road Map: A Negotiation Theory Perspective on the Israeli-Palestinian Conflict After Yasser Arafat," 30 *Yale L. J. Int'l. L.* 1 (2005)

The article looks at the impasse in Israeli-Palestinian peace negotiations from a unique, conceptual perspective. Analytical tools of interdisciplinary negotiation theory are used to categorize the barriers to a land-for-peace agreement. Three important barriers to a negotiated agreement, as well as the feasibility of strategies to overcome them, are examined. Drawing on the conclusions reached, a U.S.-sponsored peace initiative is proposed to maximize the chances of success and its particular elements and features are discussed in detail.

Kremenyuk, Victor A. *International Negotiation: Analysis, Approaches, Issues- 2nd Edition* [a publication of the Processes of International Negotiation (PIN) Project] (Jossey-Bass, 2002) (2002 CPR Book Award Winner)

This comprehensive collection of writings is published by the Processes of International Negotiation Project, which is part of the International Institute for Applied Systems Analysis, a nonprofit scientific research organization based in Laxenburg, Australia. In his preface, Kremenyuk notes how the field has changed since the first volume of *International Negotiation* was published more than a decade ago. The book is divided into sections, allowing for in-depth treatment by leaders in the field of international negotiation. Different disciplinary approaches to international negotiation including historical, economic, game and cognitive theories, are covered. These perspectives are then applied to specific international issues such as arms control, the environment and trade. A special section on education and training offers tools and techniques for developing negotiation skills.

Krivis, Jeffrey, *Improvisational Negotiation: A Mediator's Stories of Conflict About Love, Money, Anger – and the Strategies that Resolved Them*,(Jossey-Bass, 2006) (2006 CPR Book Award Winner)

This book covers a variety of issues. It starts out with a number of stories that show the author's tested and successful approaches to mediation. The second part focuses on disputes involving financial commitments. Finally, it provides a "Mediator's Hip-Pocket Guide to Strategy" which describes over fifty skill-building techniques to assist the Mediator or Negotiator.

Kupfer Schneider, Andrea and Christopher Honeyman, (eds), *The Negotiator's Fieldbook: The Desk Reference For The Experienced Negotiator*, ABA Section of Dispute Resolution, Washington, DC, 2006 (2006 CPR Award - Honorable Mention Winner)

A compilation of 80 chapters, this book provides a comprehensive guide to negotiation and mediation. The contributing authors are professors, scholars and practitioners. The authors draw insights from diverse discipline including law, psychology, behavioral economics, international relations, arts and ethics among others, revealing a whole new approach to negotiation. The chapters are conveniently sequenced under different headings and the annotated table of contents provides a gist of each chapter. The initial topics in the book discuss how people tend to frame negotiation. Following chapters discuss when a negotiation is needed, touching upon ethical and moral issues in negotiation. Subsequent topics talk about the people on all sides; who they are; practical tactics and strategies for situations; when to involve a third party; suggestions and tips to implement negotiation ideas and the concluding chapters talks about what it takes to become a good negotiator. The editors hope to see this book used as a potential text book for an advance course in negotiation.

Lee, Ilhyung, "In re Culture: The Cross-Cultural Negotiations Course in the Law School Curriculum," 20 *Ohio St. J. on Disp. Resol.* 2 (2005)

The article is aimed at shedding light on the importance of inclusion of a course in cross-cultural negotiation in the law school curriculum. The author of the article discusses some of the reasons why the course has received such little attention to date, and a critique of these reasons. A description of a suggested course content is provided as well as some practical suggestions in the presentation of the course are offered. Finally, the article explains that more attention to the subject might begin new, fruitful scholarship within the law and dispute resolution field.

Malhotra, Deepak and Bazerman H. Max "Negotiation Genius: How to overcome obstacles and achieve brilliant results at the bargaining table and beyond", Harvard Business School, Oct. 2007 (2008 Book Award Winner)

The book gives you detailed strategies that work in the real world for a negotiation. It shows the reader insightful analysis and a comprehensive approach to all parts of the negotiation process.

The book gives the reader recommendations, among others, in the following matters:

(i) How to identify negotiation opportunities,
(ii) How to discover hidden information and determine the truth even when the other side wants to conceal it,
(iii) How to negotiate from a position of weakness,
(iv) How to defuse pressure, ultimatums and threats,
(v) How to influence the other party to sell a proposal, and
(vi) How to negotiate ethically and create a unquestioning relationship.

Friedman, Gary and Himmelstein, Jack "Challenging Conflict Mediation Through Understanding", ABA and the Program on Negotiation at Harvard University, 2008 (2008 Book Award Winner)

The book is an exposition of the understanding-based mediation model, commonly used in the US, Israel, Germany, Austria , Switzerland among other European countries. It illustrates the model through a series of real mediations showing the core ideas of it:

1. The power of understanding, rather than the power of coercion.
2. The parties own responsibility for whether and how their dispute will be resolve.
3. That the parties are best served by working and making decisions together.
4. That the conflict will be best resolved by uncovering what lies underneath the level at which the parties experience the problem.

It is a book that offers wisdom to the reader and suggests practical experience to mediators.

Menkel-Meadow, Carrie. "Toward Another View of Negotiation: The Structure of Legal Problem Solving," *31 UCLA Law Review* 754 (April 1984) (1983 CPR Award Winner)

The author provides guidance on how to rethink goals and behaviors in negotiation. Assumptions people have about the objectives in negotiation are explored and a framework for problem- solving negotiation that responds to the limitations of the adversarial model is developed.

Mnookin, Peppet and Tulumello. *Beyond Winning* (2000, Belknap Press of Harvard University Press) (2000 CPR Award Winner)

This book is aimed at helping lawyers negotiate by using practical, problem-solving techniques. The book describes the many obstacles that can derail a legal negotiation both behind the bargaining table with one's own client and across the table with the other side. The book offers, clear, candid advice about ways lawyers can search for beneficial trades, enlarge the scope of interests , improve communication, minimize transaction costs and leave both sides better off than before.

Mnookin, Robert H. "Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict," *8:2 The Ohio State Journal on Dispute Resolution* 235 (1993) (1993 CPR Award Winner)

The article identifies four barriers to negotiated resolution of conflict: strategic; principle/agent; cognitive; and reactive devaluation. After describing each barrier and its relevance to negotiations, the author suggests a variety of ways that neutral third parties can assist in overcoming each of the barriers.

Raiffa, Howard, with John Richardson and David Metcalfe, *Negotiation Analysis: The Science and Art of Collaborative Decision Making* (The Balknap Press of Harvard University Press, 2002) (2003 CPR Award Winner)

This book discusses the logical (science) vs the creative (art) approach to negotiation or the analytical vs the human approach and their impact on decision making in reaching a optimally balanced conclusion to conflicts.

Robbennolt, Jennifer K., *Apologies and Settlement Levers* (Journal of Empirical Legal Studies, Volume 3, 333-373, July 2006) (2006 CPR Award Winner)

This article describes the results of an empirical study exploring the role of apologies in legal settlement negotiation through a direct email solicitation of 556 randomly selected staff members at a Midwestern university. Respondents were asked to take on the role of a plaintiff in a personal injury dispute and to indicate their assessment of the sufficiency of an apology, among other factors, while three variables were manipulated: the nature of the apology, the applicable evidentiary rule, and the evidence of the offender's fault. Although previous research has concluded that apologies have generally favorable effects on recipients on settlement decision making, Robbennolt's research goes one step further by examining the effects of apologies on a set of settlement levers – reservation prices,

aspirations, and conceptions of fair settlement – all of which have been shown to influence subjective assessments of a settlement offer and settlement behavior.

It was found that apologies changed the dynamics of settlement negotiation and promoted settlement by altering the injured parties' perceptions of the situation and offender so as to make them more amenable to settlement discussions and by altering the values of the injured parties' settlement levers in ways that are likely to increase the chances of settlement.

The study upholds the notion that the effects of apologies are quite complex and context dependent. The nature of the apology (such as its content) and factual circumstances surrounding the incident (such as the clarity of the offender's fault) play important roles in how apologies are understood.

Shell, Richard G., *Bargaining for Advantage: Negotiation Strategies for Reasonable People*. (Viking Penguin Publishers, 1999) (1999 CPR Award Winner)

The author approaches negotiation from the angle that everyone has their own unique style of communication and proceeds to offer applicable principles and strategies to enable the reader to become a more confident negotiator using his/her own communication style.

Thompson, Leigh., The Mind and Heart of the Negotiator (2001 Prentice-Hall, Inc.)

Provides executives and managers from all different kinds of industries with solid, research based advice and tools. Contains cutting-edge research and strategies and skills for improving negotiation effectiveness.

Ury, William, *Getting Past No: Negotiating Your Way From Confrontation to Cooperation*. (Bantam Books, 1991) (1991 CPR Award Winner)

In this book, the author offers a concise negotiation framework aimed at turning adversaries into partners. Techniques for how to stay in control when under pressure, defuse anger and hostility, find out what the other side really wants, counter dirty tricks, use power to bring the other side back to the table, and reach agreements that satisfy both sides' needs are explored.

Watkins, Michael, *Breakthrough Business Negotiation: A Toolbox for Managers* (Jossey-Bass, 2002) (2002 CPR Book Award Winner)

A guide to negotiating any business situation intended for supervisors and CEO's alike. Recognizing that business negotiations are rarely simple, Watkins presents system-analysis techniques and extensively develops seven key principles:

- Diagnosing the structure of a negotiation by breaking it into key components and interactions allows the negotiator to avoid the confusion of complexity.
- A good negotiator uses the structure of a negotiation to his or her advantage.
- The structure of negotiations are shaped by strategy.
- Control of the negotiation process is a source of power.
- Recognizing common patterns helps a negotiator channel the flow of process productively.

- Management of organizational learning brings an advantage in negotiation.
- Leadership and negotiation skills are closely tied.

Watkins, Michael & Susan Rosegrant, *Breakthrough International Negotiation: How Great Negotiators Transformed the World's Toughest Post-Cold War Conflicts* (Jossey-Bass, 2001) (2001 CPR Award Winner)

Breakthrough International Negotiation uses a systems analysis approach to provide a framework for managing the fluid and intricate decisions that characterize most negotiations. Drawing on four case studies–North Korea, The Persian Gulf crisis, Bosnia and the Middle East–the book retraces what went on behind the scenes, using first hand accounts from leading negotiators to explore how to achieve breakthroughs in difficult situations that seems locked in conflict and provides specific, action-orientated guidelines that can be readily applied to negotiations in a wide variety of circumstances.

Wheeler, Michael (editor), "Teaching Negotiation: Ideas and Innovations," Special Edition for *Hewlett Conference 2000: Focus on Negotiation Pedagogy* (PON Books, 2000)

This collection of articles is divided into three sections: Can Negotiation Be Taught?; Curriculum Design; and Specific Teaching Tools and Techniques. Authors from different fields and disciplines are represented, including law school, business school and school of planning.

Williams, Gerald R., "Negotiation as a Healing Process," *1996:1 Journal of Dispute Resolution* 1 (1997) (1997 CPR Award Winner)

This article views negotiation not only as a means to resolve conflict, but as a transforming and healing process that addresses the root of the conflict and not just the symptoms. The author examines conflict and negotiation from a number of disciplines including law, psychology and anthropology.

MEDIATION

Aaron, Marjorie Corman, "The Value of Decision Analysis in Mediation Practice," *11:2 Negotiation Journal* 123 (April 1995) (1995 CPR Award Winner)

When parties reach an impasse due to conflicting beliefs regarding the potential outcome of litigation, a mediator's use of a decision analytic approach to case evaluation allows the mediator to structure and present an intellectually rigorous evaluation while minimizing the risk of a perceived loss of neutrality. This article offers detailed analysis of implementing such a strategy, including comments on the use of computer software.

Abramson, Harold I., *Mediation Representation: Advocating in a Problem-Solving Process* (National Institute for Trial Advocacy, 2004) (2004 CPR Award Winner)

This book provides a comprehensive guide for attorneys representing clients in mediation. It breaks down the process of mediation from a lawyer's perspective and develops a method of balancing zealous advocacy and problem-solving in mediation representation to best take advantage of the presence of a third-party neutral.

Alfini, James J., Sharon B. Press, Jean R. Sternlight, Joseph B. Stulberg. *Mediation Theory and Practice* (Matthew Bender & Co., Inc., 2001)

The number of law school courses in mediation has increased exponentially over the last ten years. This textbook and teacher's manual aims to illustrate the richness of mediation as a field of study and present the subject matter in a manner suitable for examination as a full semester law school course. Complete with illustrative cases and articles from leaders in the field of mediation the textbook leads the student through all aspects of mediation: from a historical perspective and basic legal issues to ethics and mediator skills and styles. The accompanying teacher's manual provides stimulating and instructive exercises, most of which are conveniently designed to be carried out and analyzed within the space of one class period. Together they should provide a structured course in mediation, effectively integrating in-depth theoretical analysis with practical performance skill development.

Baruch Bush, Robert A., "The Dilemmas of Mediation Practice: A Study of Ethical Dilemmas and Policy Implications," *A Report on a Study for The National Institute For Dispute Resolution* (1992) (1992 CPR Award Winner)

This paper summarized a mediation study designed to gather information relevant to fundamental ethical issues that mediators encounter. Mediators from the state of Florida were used for the study to identify and obtain further information on common mediator dilemmas: Keeping within the Limits of Competency; Preserving Impartiality; Maintaining Confidentiality; Ensuring Informed Consent; Preserving Self-Determination/Maintaining Non-directiveness; Separating Mediation from Counselling/Therapy and Legal Advice/Advocacy; Avoiding Party Exposure to Harm as a Result of Mediation; Handling Conflicts with the Mediator's Self-Interest.

Berkovitch, Jacob (ed.), *Studies in International Mediation* (Palgrave Macmillan, 2002)

This collection of writings focuses on the past, present and future of international mediation's role in diplomacy. The included essays attempt to answer many questions including: the nature and style of mediation; its effectiveness in different contexts; the conflict management role of international organizations; mediation by international peacemakers; the influence of power in international mediation; and the meditative nature of interactive problem-solving workshops. Essays draw upon examples from both business and political spheres, from deal making international businesses to mechanisms of United Nations mediation. The book also discusses possibilities for expanding the role, relevance and applicability of mediation both formally and informally.

Brett, Jeanne M., Zoe I. Barsness and Stephen B. Goldberg, "The Effectiveness of Mediation: An Independent Analysis of Cases Handled by Four Major Service Providers," *Negotiation Journal* 259 (July 1996) (1996 CPR Award Winner)

The authors look at the effectiveness of mediation by detailing a study of 449 cases administered by four major providers of ADR services. Mediation was found to be capable of settling 78% of cases regardless of whether the mediation was mandatory or voluntary. Cost and time savings, as well as increased satisfaction were also indicated. The result is a recommendation for mediation over arbitration or as a precursor to arbitration.

Center for Effective Dispute Resolution (CEDR), *ADR Guide for Corporate Counsel and Executives* (2004)

This guide aims to provide a general introduction to the ADR processes for corporate counsel and for executives involved in dispute management. Focusing mainly on UK examples, the guide's purposes include providing a practical understanding of the mediation process and its value, highlighting questions that may need to be addressed in considering and preparing for any potential mediation, describing the use of ADR outside the context of litigation, and assisting corporate counsel in educating and advising colleagues and in working with external lawyers to make mediation effective.

Cole, Sarah R., Nancy H. Rogers and Craig A. McEwen, *Mediation: Law Policy Practice*. (Second Edition, West Group, 1999) (Earlier Edition - 1989 CPR Award Winner)

A complete two-volume treatise on mediation with supplements to keep it updated. Includes information about all aspects of mediation, including the uses of mediation, the history and policies of mediation, advice to practitioners in areas such as advising clients about mediation, confidentiality issues, conflict of interest, enforcement of mediation and more. Discusses measures for regulating mediation for quality, effectiveness, and access issues. Contains a section listing mediation statues enacted in each state.

English, Richard D., *Annotation*: *Alternative Dispute Resolution: Sanctions for Failure to Participate in Good Faith in, or Comply with Agreement Made in, Mediation*, 43 A.LR. 5th 545 (2001)

Compilations of cases regarding good faith participation in mediation.

Freund, James C., *The Neutral Negotiator — Why and How Mediation Can Work to Resolve Dollar Disputes*. (Prentice Hall Law & Business, 1994)

The Neutral Negotiator is a 48-page handbook on the use of mediation in disputes that occur between individuals in a non-continuous relationship where the issue in conflict is money. The author discusses the problems in negotiating dollar disputes, why mediation may work in such a dispute and the qualities needed by the mediator.

Galton, Eric, *Mediation: A Texas Practice Guide*. (Texas Lawyer Press, 1993) (1993 CPR Award Winner)

Although the text is geared towards Texas practitioners, this book is a practical reference for practitioners in any state. It offers information to assist and guide attorneys in the mediation process from beginning to end, including timing, selection of mediators, preparing clients for mediation and maximizing results.

Golann, Dwight. *Is Legal Mediation A Process of Repair- Or Separation? An Empirical Study and Its Implications*, 7 Harvard Neg. L. Rev. 301 (Spring 2002)

Mediation is often described as a process of repairing broken relationships. However, civil litigators tend to speak of mediation as a process of distributive bargaining that ends with an exchange of money. This article examines both perspectives through an empirical study focusing on kinds of cases that appear most likely to yield repaired relationships. In his study, Golann considers how often relationships are repaired when parties had a significant pre-existing relationship, how frequently settlement terms do not involve a future relationship, and factors that influence the likelihood a relationship will be repaired. He concludes that repaired relationships are often not common, focusing on the implication of this finding for teaching and practice.

Golann, Dwight, *Mediating Legal Disputes, Effective Strategies for Lawyers and Mediators.* (Little, Brown and Company, 1996) (1996 CPR Award Winner)

A comprehensive text on mediation. The first five chapters concisely explain the process of mediation. The following six chapters go beyond the basics and focus on impediments to settlement and ways to overcome them. The book also contains chapters dealing with special problems - confidentiality and liability issues, ethical dilemmas and with specialized contexts - employment, environmental contamination and product liability. Included in the book are practice aids such as forms, checklists and handy summaries of key points.

Hoffman, David A., Microsoft and Yahoo: Where were the mediators? They help countries and couples. Why not businesses?, The Christian Science Monitor (May 12, 2008). (CPR 2008 Short Article Winner)

Using the failure of the proposed Microsoft-Yahoo merger as a backdrop, this article explores the question of why business transactions are rarely mediated. The author explains that at the center of the issue is the neurological response to conflict of fight-or-flight, which can be buffered by the neutral and independent perspective of a mediator. The author then demonstrates how a mediator could have helped out specifically in the Microsoft-Yahoo merger.

Joseph, Jeremy, *Mediation at War: How to Actually Win "Hearts and Minds"- Improving the Reconciliative Effectiveness of the U.S. Military's Condolence Payment Program to Aggrieved Iraqi Civilians Using Culturally Competent Arab–Muslim Mediation Techniques.* (Original Paper, Georgetown Law Center, Mediation Seminar, Summer 2006) (2006 CPR Award Winner)

This article examines and discusses problems in the U.S. military's condolence payment program in Iraq. According to the author, a former United States Marine Corps Counterintelligence and Human Intelligence Officer, the lack of traditional Iraqi reconciliative process in the condolence payment program has resulted in a failure by the U.S. Military to achieve its counterinsurgency goal in Iraq. The author posits that adopting traditional rituals of Arab-Muslim mediation in the condolence payment program would be effective in promoting reconciliation by allowing the parties to engage in a constructive dialogue, thereby discouraging Iraqi civilians to support insurgent forces and in turn fostering peace and stability in the region. The article further delves into the cultural variables in the Arab-Muslim and American mediation processes. The author makes useful recommendations on the method of mediation, mediator selection and also

provides a detailed mediation process. Finally, the article discusses the challenges in implementing the intercultural mediation program and offers plausible solutions to the same.

Lande, John, *Using Dispute Systems Design Methods to Promote Good-Faith Participation in Court-Connected Mediation Programs*, 50 UCLA Law Rev. 69 (2002) (2002 Professional Articles-Honorable Mention)

Bad-faith adversarial tactics can be obstacles in mediation, however, the author posits that court mandated good-faith requirements may stimulate more inappropriate conduct than they deter. In this article, Lande proposes that other strategies may be more successful in ensuring the integrity of local mediation programs. Specifically, he examines policies that satisfy stakeholders' interests, and the use of dispute system design principles where representatives of all stakeholder groups participate in developing policies for local mediation programs. The author proposes that the outcome of this approach may be the creation of policies that satisfy everyone's interests so effectively that good-faith is achieved without implementing a good-faith requirement. Lande also proposes policy options to promote productive mediation behavior, including collaborative education about good mediation practice, use of pre-mediation consultations and document submissions, a narrow requirement of attendance for a limited and specified time, and protections against misrepresentation.

Marcus, Mary G., Walter Marcus, Nancy A. Stilwell, Neville Doherty, "To Mediate or Not to Mediate: Financial Outcomes in Mediated Versus Adversarial Divorces," *17:2 Mediation Quarterly* 143 (Winter 1999)

A statewide sample of 199 mediated and 201 adversarial divorce cases in Connecticut was analyzed for differences in financial outcomes between the two formats. No differences were found between mediated and adversarial cases in family income or liability outcomes for women, in likelihood of periodic alimony being received, or in amount of alimony received. However, women in mediated cases obtained a significantly greater percentage of assets than women in adversarial cases, periodic alimony for a significantly longer duration, and significantly more child support. Adversarial cases had significantly more post-judgment modifications and took longer from complaint to judgment.

McEwen, Craig A., "Managing Corporate Disputing: Overcoming Barriers to the Effective Use of Mediation for Reducing the Cost and Time of Litigation," 14:1 *Ohio State Journal on Dispute Resolution* 1 (1998) (1998 CPR Award Winner)

The article focuses on business to business disputes and the different ways in which businesses manage their disputes. The author examines the barriers to effective dispute management and offer suggestions on how to overcome them. The author posits that mediation is most effective only when parties change both their mind and tool sets in dispute management.

Nolan-Haley, Jacqueline M., *Lawyers, Non-Lawyers and Mediation: Rethinking the Professional Monopoly From a Problem-Solving Perspective*, 7 Harvard Neg. L. Rev. 235 (2002)

The growth in popularity of mediation as a method for problem solving has given rise to a new issue for the American legal profession: how lawyers should share power with non-lawyer mediators and arbitrators. In her article, Nolan-Haley addresses the ways problem-solving experts have

encroached onto traditionally legal turf, and the backlash movement among lawyers who desire exclusive power in the field. She notes that this conflict has more to do with business than professionalism and suggests regulating the mediation field from a problem-solving perspective instead. By considering the underlying needs and interests of parties in achieving justice and fairness, a broad vision of collaboration is set forth in order to achieve the highest quality in mediation practice. As part of this vision, the author sets forth a framework for reform that modifies current unauthorized practice of law (UPL) regulations.

Ohio State Symposium Issue, *13:3 Ohio State Journal on Dispute Resolution, Drafting a Uniform/Model Mediation Act* (1998)

Compilation of articles on the complex issues facing the drafters of a uniform mediation act.

Pauli, Carol, *News Media as Mediators* (Alternative Dispute Resolution Seminar, Benjamin N. Cordozo School of Law, Spring 2006) (2006 CPR Award Winner)

It is a commonly held belief that traditional news reporters and editors tend to emphasize conflict because conflict is what makes news stories important and inherently interesting. In this article, Carol Pauli asserts that while journalists can distort the mirror it holds up to society by focusing on the most extreme voices and exacerbating conflict, it is also possible that journalism could become a potential method of conflict resolution and that journalists could play the role of peacemakers. The author highlights striking examples in the area of politics and diplomacy where journalists have played key peace-making roles, such as when Walter Cronkite's interviews with Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin led to Sadat's historic visit to Jerusalem or when Ted Koppel hosted the first formal conversation between the African National Congress and supporters of South Africa's apartheid system.

The author compares the specific norms and practices of journalism with facilitative mediation, transformative mediation and adjudication and concludes that journalism bears closest resemblance with the latter two methods. The contrast between mediators and journalists has led to further exploration of journalism's peacemaking potential, something now being termed "peace journalism". The author suggests that peace journalism advocates further explore the goals and techniques of mediation in order encourage peace-making and journalistic integrity.

Peppet, Scott R., *Contract Formation in Imperfect Markets: Should we use Mediators in Deals?* 19 Ohio St. J. on Disp. Resol. 283 (2004) (2004 CPR Award Winner)

This article questions the usefulness of third-party mediators in complex transactions and deal-making, makes a theoretical argument for such intervention, and presents empirical evidence suggesting that this transactional mediation may already be taking place. Analyzing mediation from economical and behavioral perspectives and exploring basic justifications for mediation in dispute resolution, this piece argues that the same justifications apply, with some qualifications, to the world of transactional deal-making.

Riskin, Leonard L., "Understanding Mediators' Orientations, Strategies and Techniques: A Grid for the Perplexed," *1 Harvard Negotiation Law Review* 7 (Spring 1996) (1996 CPR Award Winner)

The article provides a seminal chart for categorizing and understanding approaches to mediation. The chart includes axises for problem definition (narrow or broad), mediator orientation (the facilitative - evaluative continuum), and mediator techniques.

Riskin, Leonard L., *Decisionmaking in Mediation: The New Old Grid and the New New Grid System,* 79 Notre Dame L.R. 1 (2003)

Revisiting his 1996 chart system for categorizing and understanding approaches to mediation, Riskin identifies a series of problems with the old system, proffers a revised version of the grid of mediator orientations, and proposes to replace the previous grids with a new, more dynamic, less problematic system.

Scanlon, Kathleen M., *CPR Mediator's Deskbook*. (CPR, 1999)

This Deskbook provides a concise, practical guide to assist mediators in their tasks. A process overview and an outline of the stages of mediation are provided complete with checklists and basic forms. A chapter is devoted to policy and ethical issues. Case examples and references are provided.

Sharp, Geoff, mediator blah… blah…, http://mediatorblahblah.blogspot.com. (CPR 2008 Short Article & website Award)

The author of this mediation blog is a commercial mediator and barrister from Wellington, New Zealand. Offering a variety of content, the blog has been touted as helping to "chart the course of the online mediation conversation" while also maintaining an "irreverent tone." The blog breaks its content down into seven categories including: mediation news, good mediation stuff on the net, reflection, practise/practice, learning, schtick, and ethics.

Shenk**,** Alyssa H., *Victim-Offender Mediation: The Road to Repairing Hate Crime Injustice*, 17 Ohio St. J. on Disp. Resol. 185 (2001) (2001 Award Winner)

American criminal law has been described as being chiefly retributive – justice is sought through punishment of the offender. However, by being limited to the offender, this form of justice ignores reparation of the actual harm done to the victim. In this article, Alyssa Shenk suggests that in many areas the reparative justice movement, and in particular victim-offender mediation, can go a long way towards solving this problem. She describes the process and goals of this process and suggests that hate-crimes are a prime example of an area into which victim-offender mediation could be extended. Hate-crimes are the result of deep-rooted biases, she contends, and only by bringing victim and offender face-to-face in a mediation setting can justice truly be given to both.

Welsh, Nancy A., *The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?*, 6 Harv. Neg. L. Rev. 1 (2001)

Party self-determination has long been held to be the fundamental principle of the mediation process. Professor Nancy Welsh begins with the vision of self-determination that dominated the original mediation movement and traces its course through the adaptation of the mediation process to the courts. She argues that as mediation has been institutionalized in the courts, the definition of self-determination has narrowed to such an extent that the disputing parties no longer play a central role in the mediation process and a growing number of disputants have begun to complain that they have been coerced into a settlement. Professor Welsh goes on to examine the ethical guidelines for court-connected mediators of two states, Florida and Minnesota, and through a review of relevant jurisprudence explains why these guidelines are not sufficient to safeguard party self-determination, proposing several alternative means to prevent coercion in mediation with particular focus on a proposal for a non-waivable three day cooling-off period.

ARBITRATION

Bowman, John P., *The Panama Convention And It's Implementation Under The Federal Arbitration Act***,** 11 The Am. Rev. of Int'l Arb. 1 (2000)

It has been over twenty five years since The Inter-American Convention on International Commercial Arbitration, known as the Panama Convention, was promulgated and over ten years since the bill implementing the Convention that became Chapter 3 of the Federal Arbitration Act was signed into law. Bowman's article offers a broad review of the Convention's provisions, examines similarities and differences between the Panama Convention and the principal treaty on international arbitration – the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the New York Convention – and examines the implementation of the Panama Convention in the United States. Of paramount importance to anyone involved in arbitration concerning Latin America and the United States.

Bühring-Uhle, Christian., *Arbitration and Mediation in International Business.* (Kluwer Law International, 1996) (1996 CPR Honorable Mention)

Cole, Sara Rudolph, "State Action and Arbitration," 1 *B.Y.U. L. Rev.* (2005)

This article discusses the notion of arbitration as it relates to state action, particularly within the context of securities arbitration. The author ultimately concludes that since the rules governing arbitration are facially neutral, the Flagg-Lugar analysis would apply to determine whether state action is present when a private party seeks to enforce of an agreement to arbitrate. Further, within the securities arbitration context, the SEC regulates self-regulatory organizations (SROs) and encourages them to arbitrate disputes, while at the same time requiring all brokers to register with a SRO. From these considerations, the author determines that state action must be present in securities arbitration. In addition, the author explores the concept that although parties may utilize the courts to enforce arbitration awards or agreements does not convert binding alternative dispute resolution into a public function.

Davis, Ben, *The Color Line in International Commercial Arbitration: An American Perspective*, 14 American Rev. of International Arbitration, (Columbia University, 2004)

This paper examines the de facto segregation of races in international commercial arbitration from the American perspective and analyzes the interaction between seven currents that determine the presence of U.S. minorities in specific areas, making recommendations to facilitate integration.

Drahozal, Christopher R., *A Behavioral Analysis of Private Judging*, 67 Law & Contemp. Probs. 105 (2004)

This article explores influences on decision making by arbitrators and extends the traditional behavior analysis of judges and jurors in litigation to private proceedings. It considers implications of that analysis in the debate on pre-dispute consumer arbitration clauses and examines structural differences between decision making in litigation and in arbitration.

Ittig, Judith B. & Michael J. Bayard, *Thirty Steps to a Better Arbitration,* 59-Oct. Disp. Resol. J. 41 (2004)

A practical guide to new strategies in arbitration gleaned from recent cases. This article outlines unique problem-solving mechanisms and offers tips for adoption or adaptation by arbitration practitioners.

Gleason, Erin E., International Arbitral Appeals: What Are We So Afraid Of? 7 Pepp. Disp.Resol. L.J. 269 (2007) (Student Article – 2002 CPR Student Article Winner) (2007 CPR Award Winner – Student Article).

This article explores the advantages of instituting appellate mechanisms in investor-state disputes and international commercial arbitration. Part II begins with a review of the WTO Appellate Body's development and workings, followed by an analysis of other appellate procedures for international trade law arbitration, including the MERCOSUR system's Permanent Court and the Grain and Feed Trade Association's appeals process. These examples demonstrate successful processes within the international realm. Part III examines the current methods for reviewing investor-state arbitration awards under ICSID and NAFTA. Neither system provides an effective method for appealing arbitral awards. The lack of such a structure has a deleterious effect on the development of a reliable and consistent body of law in this area. Part III goes on to advocate for the creation of an Appeals Facility, separate from current arbitral institutions, which would be empowered to hear appeals in investor-state arbitrations. Part IV studies the lack of appellate practice within international commercial arbitration. This section examines current domestic appeals process within the US and institutional scrutiny of awards. After analyzing examples of Austrian, South African and French institutional appellate procedures, Part IV argues that the lack of these processes in other jurisdictions must be remedied in the interests of efficiency and party autonomy. Part V concludes that parties should be permitted to participate in appellate review of arbitral awards, if they so choose.

Gulley, Drew M. "The Enhanced Arbitration Amendment: A proposal to Save American Jurisprudence from Arbitration, Modeled on the English Arbitration Act of 1996", 36 Hofstra L. Rev. 1095, June 2008

The article examines the increasing prevalent critiques of arbitration and concludes that arbitration is "strangling" the production of new common law and statutory interpretation. To solve this matter, the writer alleged the US should adopt, with some modification, an enhanced arbitral appellate process for arbitration awards, allowing parties to appeal to a district court under specific circumstances.

Macneil, Ian, Richard Speidel and Thomas J. Stipanowich, *Federal Arbitration Law: Agreements, Awards and Remedies under the Federal Arbitration Act* (Aspen Publishing (previously Little, Brown), 1994)

A five-volume treatise on federal arbitration law and related issues.

Rau, Alan Scott, "The Culture of American Arbitration and the Lessons of ADR," 40 *Tex. Int'l L.J.* 449 (Spring 2005)

This article provides insight into the three distinctive features that characterize American arbitration. First, the culture of arbitration is "contractual;" the parties have the freedom to alter arbitration as a result of the private agreement upon which they concur. Second, arbitration is "expansionist," or "elastic;" parties have the right to choose non-binding arbitration, mediation, interest arbitration, and compulsory arbitration. Additionally, the command of arbitration is now extending to cover to appraisals and "expertise." Third, arbitration is "a-legal;" arbitrators may act as *amiables compositeurs,* and decide awards according to the principles that they believe just, even if it conflicts with the law. Of course, the inclination of arbitrators to depart from standing legal rules depends on the willingness of the parties to allow them to do so. These three characteristics are all interconnected and rooted within the American legal culture. The author writes that this changing face of arbitration suggests that parties are more frequently shaping and adapting various processes of arbitration to meet their own needs.

Reilly, Christine M., *Achieving Knowing and Voluntary Consent in Pre-Dispute Mandatory Arbitration Agreements at the Time of the Contracting Stage of Employment*, 90 Calif. L. Rev. 1203 (July 2002) (Student Article – 2002 CPR Student Article Winner)

Pre-Dispute Mandatory Arbitration Agreements ("PMAA's") have been hotly debated by the legal community for years because of the affects they can have on unwitting parties. Courts have regularly upheld such agreements. In an effort to resolve the debate surrounding PMAA's, some scholars have suggested applying a knowing and voluntary standard of consent to these agreements, but a means for implementing this standard has not been proposed. In her article, Reilly examines ways to implement the knowing and voluntary standard in a pre-employment context. She covers the definition, significance and history of PMAA's, the modern understanding of "knowing and voluntary consent," and barriers to achieving true consent. She next applies the knowing and voluntary consent model of the Older Workers Benefit Protection Act ("OWBPA") to PMAA's. Reilly proposes a modified version of the OWBPA consent model called the "Meaningful Choice and Informed Consent Regime" as a better method for establishing true consent in the pre-employment context. This regime includes correcting legal misconceptions through federally mandated disclosure statements, making applicants more active participants in determining the terms of their employment, and leveling the power differential between the employer and prospective employee.

Ravanides, Christos, "Arbitration Clauses in Public Company Clauses: An Expansion of the ADR Elysian Fields or a Descent into Hades?" 18(4) Am Rev Int'l Arb, 2008 (CPR 2008 Award Winner)

Resuming the stalled debate about the "arbitrability of disputes between publicly-held companies, their shareholders and directors," this article covers topical areas of development on the subject. First, the article reviews recent domestic changes in policy towards the use of arbitration in

intracorporate disputes, revealing traces of a pro-arbitration trend among foreign-issuers and the SEC. Next, through close analysis of the legal underpinnings of arguments for and against enforceability of arbitration clauses in public company constitutions, the article argues that even without enhanced disclosure requirements, modern arbitration law does not bar enforcement of such clauses. Lastly, the author sets forth a comparative analysis of international practice offering lessons on the efficiency of granting wide latitude in selection of methods of intracorporate conflict resolution. Interwoven throughout the article is the author's opinion that stockholders of a public company should not be precluded from waiving their right to court adjudication.

Reuben, Richard C. , *First Options, Consent to Arbitration, and the Demise of Separability: Restoring Access to Justice for Contracts with Arbitration Provisions*, 56 SMU L. Rev. 819 (2003) (2003 CPR Award Winner)

This article describes the context and current state of the law related to determining arbitrability and separability of arbitration provisions under the Federal Arbitration Act, urges the Supreme Court to continue its path toward actual consent in arbitration, and suggests an approach for reconciling the tension between the *Prima Paint* and *First Options* decisions. The author argues for a contemporary and normatively desirable understanding of *Prima Paint* that would establish a rule of arbitrator competence to determine their own jurisdiction, finding that recognition of a *competence-competence* doctrine in arbitration would be consistent with party expectations, the Court's apparent current trajectory of actual consent, and international legal standards.

Rogers, Catherine, *Fit and Function in Legal Ethics: Developing a Code of Conduct for International Arbitration*, 23 Mich. J. Int'l L. 341 (Winter 2002) and companion piece, *Context and Institutional Structure in Attorney Regulation: Constructing an Enforcement Regime for International Arbitration*, 39 Stan. J. Int'l L. 1 (forthcoming 2002) (2002 Professional Articles CPR Award Winner)

It has long been recognized that an ethical void exists in international arbitration, and these articles attempt to fill that void. In the first piece, Rogers rejects classical conceptions of legal ethics as a product of combined principles, noting that implicit understandings and peer pressure are no longer effective means of regulation in international arbitration. The author proposes that ethics should instead be derived from interrelated roles of advocates in the system, and should parallel the structural operations of a system. Thus, she advocates a functional approach for developing a code of ethics. The author explains how norms should be developed based on the features of international arbitration, recommending certain ethical norms. The companion piece proposes integrated mechanisms for making ethical norms binding and enforceable. The author concludes that popularity, effectiveness and fragility characterize international arbitration, highlighting the importance of finding a mechanism for attorney regulation.

Schwartz, Robert Alexander, *Can Arbitration Do More for Consumers? The TILA Class Action Reconsidered*, 78 N.Y.U. L. Rev. 809 (2003) (2003 CPR Award Honorable Mention Winner)

In this note, the author assesses the state of the debate in the latest chapter of the ever-unfolding law of arbitration. Focusing on disputes arising under TILA, the note analyzes case law upholding arbitration agreements contained in consumer-lending contracts of adhesion as well as recent scholarship criticizing the courts' actions. The author concludes that both

the courts and the scholars have it wrong and that neither arbitration as presently constituted nor class action lawsuits can provide individual justice to TILA plaintiffs. The note suggests an alternative legal framework for attacking unfair arbitration clauses while offering a set of modernizing improvements that might make arbitration a viable tool for the resolution of TILA claims and other consumer agreement disputes.

Simpson Thacher & Bartlett. *A Chart Comparing International Commercial Arbitration Rules (2d ed.)*. (Juris Publishing, Inc., 2002)

This book contains a chart comparing the provisions of the leading sets of international arbitration rules. The chart compares provisions of the rules of the International Chamber of Commerce (ICC), American Arbitration Association (AAA) and London Court of International Arbitration (LCIA) as leading sets of institutional international arbitration rules and the rules of the United National Commission on International Trade (UNCITRAL) and CPR Institute for Dispute Resolution as sets of ad hoc rules. Moreover, the arbitration rules of the International Centre for Settlement of Investment Disputes (ICSID) and the World Intellectual Property Organization (WIPO) are included. The charts is useful in assisting clients in drafting arbitration provisions and representing clients in international arbitrations.

Stempel, Jeffrey W., *Arbitration, Unconscionability, and Equilibrium: The return of Unconscionability Analysis as a Counterweight to Arbitration Formalism,* 19 Ohio St. J. of Disp. Resol. 757 (2004)

This article reviews the development of the Supreme Court's arbitration jurisprudence and examines the application of arbitration clause enforcement in lower courts and emergent judicial use of unconscionability and related analyses to police arbitration agreements. The article looks at past and future developments in arbitration and argues that a reasonably vigorous unconscionability doctrine remains an appropriate and important means for courts to prevent arbitration abuses.

Stipanowich, Thomas J., (editor), et al., *Commercial Arbitration at its Best: Successful Strategies for Business Users* (ABA,CPR, 2001)

A culmination of the efforts of the CPR Commission on the Future of Arbitration, the book incorporates the collective wisdom and experience of 50 leaders in the ADR field. It is a reference book for those who are familiar with arbitration practice as well as those who are considering it for the first time. Each chapter covers a key area of the arbitration process and addresses the most important issues that parties must address. Includes Rules, Model Provisions, Sample Agreements and over twenty appendices.

Von Kann, Curtis E., *The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration*. (JurisNet, LLC, 2006)

The CCA Guide to Best Practices in Commercial Arbitrations is directed at arbitrators and advocates in the field of commercial arbitration. The aim of the Guide is to identify "best practices" that arbitrators can employ to provide users of arbitration with the highest standards of economy and fairness in the disposition of business disputes. This book examines practical contemporary topics such as the *Appointment, Disclosures, and Disqualification of Neutral Arbitrators, Determining Jurisdiction and*

Arbitrability, Class Arbitration, and Post-Award Matters. The 41 Contributing Authors are composed of leading practitioners and nationally recognized experts, including experienced arbitrators and counsel.

World Arbitration & Mediation Report (Juris Publishing, Inc.)

Monthly publication that reports on caselaw, statutory and other pertinent development occurring within the US and abroad in connection with arbitration and mediation.

CONSENSUS BUILDING

Susskind, Lawrence, and Jeffrey L. Cruikshank, *Breaking Robert's Rules: The New Way to Run Your Meeting, Build Consensus, and Get Results.* (Oxford University Press, 2006)

Breaking Robert's Rules is directed at formal and informal groups such as committees, boards, and neighborhood associations who want to work together more effectively. Written in a non-technical style, this book provides a guideline for running meetings based on effective communication and consensus building. This book explains the specific problems that prevent a group's progress, gives solid advice on how groups can move forward without resorting to "majority rules," and outlines five key steps toward consensus building. It also includes a one-page "Handy Guide" and a case study demonstrating how ideas can also be applied in a corporate context.

Susskind, Lawrence, Sarah McKearnan, and Jennifer Thomas-Larmer, *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*. (Sage Publications Inc., 1999) (1999 CPR Award Winner)

The Consensus Building Handbook contains a "short guide" summarizing the essential steps and procedures involved in building consensus, intended for use as an alternative to Robert's Rules of Order; 17 chapters that describe the phases, facets and forms of consensus building, including "how to" explanations for reaching agreement; and 17 case studies with commentary drawn from a variety of settings. Contributing Authors include 52 leading authorities and internationally recognized experts.

COURT ADR

Brazil, Wayne D., *Effective Approaches to Settlement: A Handbook for Lawyers and Judges*. (Prentice Hall Law and Business, 1988) (1988 CPR Award Winner)

This handbook offers practice tested suggestions on how to prepare for and conduct negotiations within court settlement conferences. The Honorable Magistrate Wayne Brazil draws attention to the most common, but least recognized, mistakes that often cause settlement negotiations to flounder. Analysis of well-known bargaining steps and assessment of the impact of each on opposing counsel's strategy and willingness to make a deal, the direction the judge may attempt to guide the discussion, and the client's personal objectives are explored.

Cole, Sarah Rudolph & E. Gary Spitko, *Arbitration and the Batson Principle*, 38 Ga. L. Rev. 1145 (2004)

This article considers whether it should be permissible under the Equal Protection Clause for a party to a court-ordered or contractual arbitration to exercise a preemptory strike against a potential arbitrator based on characteristics which would not be permissible bases for such a strike of a potential juror in a public court proceeding. The article considers the extent to which and agreement by parties allowing discrimination in selection of an arbitrator should be enforceable and the extent to which actual discriminatory selection of an arbitrator should invalidate a subsequent arbitral award.

Federal Judicial Center. *Mediation & Conference Programs in the Federal Courts of Appeals - A Sourcebook for Judges and Lawyers.* (Federal Judicial Center, 1997)

A reference guide on mediation and conference programs in the federal courts of appeals. The sourcebook is a response to requests from the appellate courts for a detailed description of others circuits' mediation and conference programs as well as more general information about what occurs in other circuits. A useful reference guide for lawyers who need to learn more about these programs.

Folberg, H. Jay and Joshua D. Rosenberg, "Alternative Dispute Resolution: An Empirical Analysis," *46:6 Stanford Law Review* 1487 (July, 1994) (1994 CPR Award Winner)

The article contains the findings and recommendations of the authors' 4 year study of the early neutral evaluation (ENE) program in the Northern District of California. Two-thirds of those assigned to ENE were satisfied with the process and believed it was worth the resources devoted to it; half of those assigned to ENE saved money, with average savings exceeding ten times the cost of an ENE session; and about half of the cases in which ENE session were held were resolved more quickly than cases not assigned to the ENE program. The key predictors of a successful ENE outcome were the attitudes and skills of the neutral evaluator. A number of the authors' recommendations focus on selecting and retaining effective neutrals.

Fowler, et al., *Planning Mediation Programs: A Deskbook for Common Pleas Judges* (The Supreme Court of Ohio Office of Dispute Resolution, 2000) (2000 CPR Award Winner - Student Articles)

The book was published by the Supreme Court of Ohio to assist in implementing mediation programs in every Common Pleas court in the state. The book provides the planner with the necessary information to start and administer a court-connected mediation program.

Golann, Dwight, "Making ADR Mandatory: The Constitutional Issues," *68 Oregon Law Review* 487 (1989) (1989 CPR Award Winner)

The article analyzes the significant constitutional issues that arise when legislation or the courts impose ADR unilaterally in civil disputes. Issues examined include the right to a jury trial, the separation of powers, due process concerns and access to the courts, the right to equal protection, and federal-state relations.

Guthrie, Chris, Jeffrey J. Rachlinski & Andrew J. Wistrich, *Inside the Judicial Mind*, 86 Cornell L. Rev. 777 (2001) (2001 CPR Award Winner)

Through a series of controlled experiments the authors seek to determine whether five common cognitive illusions would influence the decision

making processes of a sample of 167 federal magistrate judges. The results, showing that all five of these illusions have a significant effect on judicial decision making, have considerable utility to proponents of ADR, especially for mediators, or attorneys advising their clients, who wish to challenge assumptions about the outcome of a case if presented before a judge.

Korobkin, Russell, *Aspirations and Settlement*, 88 Cornell L. Rev. 1 (2002)

A variety of factors contribute to whether litigants chose to settle out of court. Law and economics scholars address such situations by referring to parties' reservation prices. This framework has been augmented by behavioral science insights, forming the "standard model" of settlement. However, Korobkin notes that the standard model does not consider how litigants' aspirations play a role in the settlement process, and he attempts to bridge the gap between the standard model and general negotiation literature. Understanding the role of aspirations in settlement may improve understandings of settlement bargains, and allow negotiators to improve individual outcomes. Thus, he advances a theory for incorporating the effect of aspirations into the standard model, and provides experimental evidence in support of his theory. His findings indicate that those with higher aspirations are likely to be more successful in obtaining favorable outcomes, but are less likely to obtain settlements and less likely to be satisfied when settlements are obtained. Korobkin concludes that the best approach balances the benefits of high aspirations against their costs.

Niemic, Robert J., Donna Stienstra, Randall E. Ravitz, *Guide to Judicial Management of Cases in ADR* (Federal Judicial Center, 2001) (2001 CPR Award Winner)

A guide for federal bankruptcy and trial courts on when and how to refer appropriate cases to ADR. Informative on all aspects of court-referral of ADR with extensive advice on:

- when and how to raise the subject with the parties
- what types of cases and what sorts of parties would be suitable for ADR and what type of ADR process to use.
- deciding on party consent, client attendance and degree of party participation.
- selecting, compensating and safely communicating with the neutral.
- writing the referral order.
- providing confidentiality and when confidentiality is not assured
- successfully managing a case referred for ADR.

Ohio State Symposium Issue, *14:3 Ohio State Journal on Dispute Resolution, Structure of Court-Connected Mediation Programs* (1999)

A special issue dedicated to the court ADR programs and issues. Articles address subjects such as mandatory ADR - both court imposed and through agreements to arbitrate; the use of ADR in medical disputes; the use of ADR to address issues of public concern; and possible structures to deliver ADR in the courts.

Plapinger, Elizabeth & Donna Sienstra, *ADR and Settlement in the Federal District Courts*. (CPR, 1996)

This sourcebook provides information on court ADR programs and settlement procedures on a district-by-district basis. An analysis of the ADR trends in the federal district courts is provided.

Plapinger, Elizabeth, Margaret Shaw and Donna Stienstra (eds.), *Judge's Deskbook on Court ADR*. (CPR, 1993)

A concise tool for lawyers and judges on ADR process, policy and case referral in federal courts.

Plapinger, Elizabeth and Margaret Shaw, *Court ADR: Elements of Program Design*. (CPR, 1992)

A guide to developing court ADR programs in federal and state courts.

Shestowsky, Donna, "Improving Summary Jury Trials: Insights from Psychology," 18 Ohio St. J. on Disp. Resol. 469 (2003) mailto:d-shestowsky@kellogg.northwestern.edu*(2003 CPR Award Honorable Mention Winner)*

In an attempt to fill the void in existing literature, this article provides a critical analysis of SJTs from a psychological perspective, with substantial emphasis on jury psychology. The article concludes that the SJT is a promising ADR tool, but that it fails significantly short of its potential. By implementing insights drawn from psychological research, the effectiveness of this form of ADR can be considerably enhanced. The article explores existing psychological research, addresses the treatment of summary jurors, and encourages SJT administrators to adhere to appropriate ethical norms in order to protect the reputation of the legal system.

Stienstra, Donna & Susan M. Yates (editors), ADR Handbook for Judges. (American Bar Association Section of Dispute Resolution, 2004)

This Handbook presents the information that judges need at their fingertips to facilitate the development and refinement of court dispute resolution programs. The book contains expert advice on various uses of ADR and provides necessary information for the implementation and improvement of court ADR programs. Authors discuss elements of program design, implementation and evaluation and offer advice on recruiting and training neutrals, funding and maintaining programs, obtaining support from the bench and the bar, and managing programs. The book also provides sample forms, rules, statutes, and other useful materials.

Szalai, Imre S., "The New ADR: Aggregate Dispute Resolution and *Green Tree Financial Corp. v. Bazzle*," 41 *Cal. W. L. Rev.* 1 (2004) (published in 2005)

This article examines the increasing trend toward class arbitration, focusing in depth on the South Carolina Supreme Court's Bazzle decision. The fragmented plurality held that it was ambiguous as to whether the contract permitted class arbitration and that the arbitrator is the appropriate decision maker as to whether the agreement permits class arbitration. By contrast, the dissent stated that class arbitration violated the agreement, and that the court is the appropriate decision maker. The article agrees lower courts, the AAA, and arbitrators have been falsely using Bazzle as an authority, yet

the divided opinions produce no binding precedent. The article then explores how compelling an entire class to arbitrate may be challenging under the procedure established by the FAA. The article gives a detailed explanation of the role of opt-outs in relation to class proceedings, and explains that there is more support to the Bazzle dissent that the court is the correct decision-maker in questions of whether a court or arbitrator should determine if arbitration agreements provide for class arbitration. Finally, the article discusses concerns about class arbitration as a means of aggregate dispute resolution, such as nationwide ramifications when an error by a single arbitrator is made.

Thompson, Peter N., *Enforcing Rights Generated in Court-Connected Mediation—Tension Between the Aspirations of a Private Facilitative Process and the Reality of Public Adversarial Justice,* Ohio State Journal on Dispute Resolution, 2004

This article exposes the lack of effective control place on mediators in court-connected mediation, noting that the current system leaves itself open to unfairness in the mediation process. Asserting that mediation is ripe for reassessment, the article argues that substantive principles of contract law must recognize and accommodate the mediation process. It encourages courts to explicitly regulate and supervise mediation and work to make sure mediators act in ways consistent with the realization of clearly-defined goals of efficient and fair resolution of disputes through a highly structured adversary system that facilitates mediators' core values of conciliation, party empowerment, and voluntary self-determination.

Welsh, Nancy A., *The Thinning Vision of Self-Determination in Court-Connected Mediation: The Inevitable Price of Institutionalization?*, 6 Harv. Neg. L. Rev. 1 (2001)

Party self-determination has long been held to be the fundamental principle of the mediation process. Professor Nancy Welsh begins with the vision of self-determination that dominated the original mediation movement and traces its course through the adaptation of the mediation process to the courts. She argues that as mediation has been institutionalized in the courts, the definition of self-determination has narrowed to such an extent that the disputing parties no longer play a central role in the mediation process and a growing number of disputants have begun to complain that they have been coerced into a settlement. Professor Welsh goes on to examine the ethical guidelines for court-connected mediators of two states, Florida and Minnesota, and through a review of relevant jurisprudence explains why these guidelines are not sufficient to safeguard party self-determination, proposing several alternative means to prevent coercion in mediation with particular focus on a proposal for a non-waivable three day cooling-off period.

INTERNATIONAL ADR

Berry, Joshua, "The Trouble We Have with the Iraqis is US: A proposal for Alternative Dispute Resolution in the New Iraq," 20 *Ohio St. J. on Disp. Resol.* 487 (2005) (2005 CPR Award Winner)

This note discusses the need for mediation as an alternative form of dispute resolution, noting the important role mediation plays in Islamic society. The author suggests approaches that should be employed by non-Islamic parties in mediation that takes place in Iraq. This note emphasizes that Muslim culture places a premium on honor, dignity and self-respect. Consequently, mediated dispute resolution is highly valued since it permits parties to evade public confrontation in a courtroom. The author concludes that Americans should employ traditional Iraqi mediation methods followed when subject to mediation in that forum or other predominantly Muslim countries in order to foster trust and cultural understanding between the parties.

Guo, Haini & Bradley Klein, *Bargaining in the Shadow of the Community: Neighborly Dispute Resolution in Beijing Hutongs*, 20 Ohio St. J. on Disp. Resol. 825 (2005)

This article contrasts the function of informal social norms with that of formal law in the context of coordinating social behavior, determining individual entitlements, and guiding dispute resolution efforts in Beijing community-building disputes. The article explores the structure of Beijing Hutongs in the dispute resolution arena and elaborates upon the fact that they involve more formal mediation of disputes by certain localized, unique institutions characterized as "non-legalistic public authorities".

Hendy, Daniel, "Is a Truth Commission the Solution to Restoring Peace in Post-Conflict Iraq?" 20 *Ohio St. J. on Disp. Resol.* 527 (2005) (2005 CPR Award Winner)

The author of this article discusses what the people of Iraq should do with members of Saddam Hussein's regime still residing in Iraq who are responsible for human rights abuses. A critical aspect to Iraq's peaceful transition is how the new Iraqi government addresses the human rights atrocities committed during Saddam's reign and deals with the perpetrators of those abuses. The article discusses the recent development of truth commissions as an alternative method of dispute resolution and assesses the utility of a commission in post-conflict Iraq. The author concludes that a hybrid system with domestic trials and a truth commission is the best solution for Iraq.

PUBLIC SECTOR

Robbennolt, Jennifer K., "Apologies and Legal Settlement: An Empirical Examination," 102 Mich. L. Rev. 201 (2003) (2003 CPR Award Winner)

This article empirically explores the relationship between apologies and the settlement of civil disputes. The findings support the conclusion that apologies, traditionally controversial, can be beneficial in facilitating settlement of disputes. However, the results also suggest that apologies influence settlement in complex ways. The article explores the influence of several factors, such as the nature of the apology, the severity of the injury, and other evidence of responsibility, on the capacity of an apology to facilitate settlement. The findings of this study provide a guideline for defendants contemplating apologies, plaintiffs who receive apologies,

lawyers who advise clients about apologies in litigation, and legislators considering evidentiary protections for apologies.

Senger, Jeffrey M., *Federal Dispute Resolution: Using ADR with the United States Government*. (Jossey-Bass, 2004)

This book provides a detailed, practical guide to the use of ADR in cases involving the federal government, including an examination of public ADR programs and advice on effective dispute resolution. Appendixes include applicable statutes and federal provisions.

Susskind, Lawrence and Patrick Field, *Dealing with an Angry Public*. (The Free Press, 1996). (1996 CPR Award Winner)

This book provides guidance to business and government leaders to help them negotiate, rather than fight, with their critics. Practical strategies available to overcome resistance by applying a mutual gains approach involving face-to-face negotiation are discussed. The role of the media is also discussed and strategy options.

SUBJECT MATTER SPECIFIC

Anderson, Frederick R., "Negotiation and Informal Agency Action: The Case of Superfund," *1985:2 Duke Law Journal* 261 (April 1985)

An article useful for its historical value, an examination is undertaken of the endemic costs and delays associated with Superfund hazardous waste sites cleanup projects and implementation of ADR procedures to improve the pace and efficiency of the program. The issue of negotiating with a government agency where there may be a conflict in roles is examined.

Arnold, Tom., *Patent Alternative Dispute Resolution Handbook*. (Clark Boardman Callaghan, 1991)

A practitioner's guide to the use of ADR in patent disputes. Chapters include discussions on the need for ADR in patent disputes and the numerous types of ADR processes applied to patent disputes (e.g., arbitration, mini-trial, private judging, summary jury trials, moderated settlement conferences, mediations).

Blankley, Kristin M., *Class Actions Behind Closed Doors? How Consumer Claims Can (and Should) Be Resolved by Class Action Arbitration* 20 Ohio State Journal on Dispute Resolution, 2004

This article advances three models that could be expanded to encompass the need for class arbitration, examines ways in which the standards of class action litigation can be incorporated into class arbitration to create a process that is efficient and fair, and sets forth a new approach to class arbitration that would promote judicial economy while maintaining a process that is fair to absent class members.

Brett, Jeanne M. and Stephen Goldberg, "Grievance Mediation in the Coal Industry: A Field Experiment," 37:1 *Industrial & Labor Relations Review* 49 (October 1983) (1983 CPR Honorable Mention)

An experiment in the use of mediation for grievances occurring in four districts of the United Mine Workers of America is accounted. The article reports detailed outcome and findings that indicate an overwhelming success.

CPR and American Hospital Association, *Managing Conflict in Health Care Organizations*. (CPR, 1995)

A handbook for establishing a conflict resolution program in a hospital, medical practice or health care network. Emphasizes coverage, bioethical, disaffiliation, workforce and general business disputes. Includes contract clauses and model procedures.

CPR and International Trademark Association (INTA), *ADR in Trademark & Unfair Competition Disputes: A Practitioner's Guide*. (CPR, 1994)

Contains model procedures, rules, agreements and sample contract clauses.

Leader, Laurie & Melissa Burger, *Let's Get a Vision: Drafting Effective Arbitration Agreements in Employment and Effecting Other Safeguards to Ensure Equal Access to Justice*, 8 Employee Rts. & Emp. Pol'y 87 (2004)

This article provides a guide to aide drafters in the creation of effective employee arbitration agreements that protect due process rights and promote justice. It defines the permissible scope of such agreements, offers ideas to promote mutuality and fairness, and explores avenues to ensure that both parties to the employment relationship view arbitration as a viable, cost-effective means of dispute resolution.

Lide, Casey, "ADR and Cyberspace: The Role of Alternative Dispute Resolution in Online Commerce, Intellectual Property, and Defamation," *12:1 Ohio State Journal on Dispute Resolution* 193 (1996) (1996 Student Article CPR Award Winner)

ADR's role in the resolution of cyberspace disputes is examined.

Marks, Bruce S., "Commercial Conflict Management and Alternative Dispute Resolution in the Oil and Gas Industry," *Oil & Gas Law & Taxation, Chapter 9* (1990) (1990 CPR Honorable Mention)

An examination of ADR and conflict management in the oil and gas industry is conducted with a proposed industry dispute resolution model.

Marcus, Leonard J. with Barry C. Dorn, Phyllis B. Kritek, Velvet G. Miller and Janice B. Wyatt, *Renegotiating Health Care: Resolving Conflict to Build Collaboration*. (Jossey-Bass Publishers, 1995) (1995 CPR Award Winner) (available from CPR)

The authors present a practical guide to collaboration for health care practitioners. They include effective tools for understanding conflict, negotiating differences, and creating a workable balance among those who deliver, receive, administer, and oversee health care.

Matthews, Gregory P., *Using Negotiation, Mediation, and Arbitration to Resolve IRS-Taxpayer Disputes*, Ohio State Journal on Dispute Resolution (Vol. 19:2), 2004

This article examines the relationship between the Internal Revenue Service and alternative dispute resolution, recognizing that mediation offers the greatest promise for fair interactions between the IRS and individual taxpayers. The article takes a novel look at mediation's abilities to ensure fairness inside the process, promote the image of fairness outside the mediation, increase the attention to detail on individual returns, and allow individuals to interact effectively with the IRS.

O'Leary, Rosemary, Tracy Yandle & Tamilyn Moore, "The State of the States in Environmental Dispute Resolution," 14 Ohio State Journal on Dispute Resolution 515 (1999)

This article reports the findings of a national survey of environmental dispute resolution programs in every state, as well as the District of Columbia. Excellent resource.

Phillips, F. Peter, *How Companies Manage Employment Disputes: A Compendium of Leading Corporate Employment Programs*. (CPR, 2002)

This book compiles and analyzes those dispute resolution programs; notes common themes in these systems; points out ways in which varied approaches were taken in addressing common questions of structure; and reports on the results of the programs.

Appendices include interviews with a number of experienced designers and administrators of complex employment dispute programs as well as copies of the participating companies' dispute resolution program brochures.

Plant, David W., *Resolving International Intellectual Property Disputes*. (1999, ICC Publishing S.A.)

This detailed publication shows how international intellectual property disputes can be resolved rationally and expeditiously, rather than resorting to full-blown litigation. Exploring the use of processes which the parties define and control, such as arbitration, mediation, and variations, this book takes the reader through a number of different solutions and explains them thoroughly.

Rush-Presbyterian-St. Luke's Medical Center, (CPR Outstanding Practical Achievement 2001 Award Winner) (available from CPR)

An innovative method and system to manage and resolve medical malpractice claims.

Scanlon, Kathleen M., *Drafter's Deskbook, Dispute Resolution Clauses*. (CPR, 2002)

The Drafter's Deskbook for Dispute Resolution Clauses provides a how-to synopsis of dispute resolution processes, contains more than 40 actual clauses utilized by leading companies, and numerous drafting checklists with case citations. Most industries and subjects are covered, including professional service agreements, intellectual property, leases, purchase orders, and just about every potential dispute topic in between.

Shah, Aashit, *Using ADR to Resolve Online Disputes*, 10 Rich. J.L. & Tech. 25 (2004)

This article discusses some of the online alternative dispute resolution providers and the type of disputes that are amenable to settlement by online ADR, analyzes the effectiveness of this forum and weighs its pros and cons. The article addresses proposed models for online ADR and suggests some issues that providers should keep in mind to maintain consumer confidence and make this emerging method more effective.

SquareTrade, Inc., (Steve Abernethy, President and CEO) (CPR Outstanding Practical Achievement 2002 Award Winner)

For innovations in online dispute resolution. *See* www.squaretrade.com for full details.

Stipanowich, Thomas J., "Beyond Arbitration: Innovation and Evolution in the United States Construction Industry," *31: 1 Wake Forest* 65 (Spring 1996)

This law review article provides (i) a brief history of dispute resolution in the construction industry and identifies the range of approaches being used; and (ii) a detailed description and analysis of results from a 1991 ABA-sponsored survey on dispute resolution in the construction industry and a 1994 multidisciplinary survey on dispute avoidance and resolution in the construction industry. General summaries and conclusions are provided.

Sturm, Susan, *Second Generation Employment Discrimination: A Structured Approach*, 101 Colum. L. Rev. 458 (2001)

Although overt discrimination arguably is diminishing in most American workplaces, Professor Susan Sturm highlights less obvious forms of bias which still persist. These second generation patterns of discriminations result from cognitive bias, structures of decision-making and patterns of interaction rather on deliberate, intentional racism or sexism. Due to the subtle characteristics of these types of discrimination, Sturm argues that claims are not suited to formal, after-the-fact legal redress and instead argues for a normative structural approach within workplace practice, stressing the important role to be played by mediators and other intermediaries in brokering the relationship between workplace innovation and judicial elaboration. She goes on to consider objections to, and existing countervailing tendencies that undermine, this approach and proposes a regulatory framework that disrupts these tendencies and encourages effective problem-solving.

Wells, Robert, "The Use of Arbitration in Director and Officer Indemnification Disputes." *13:1 Ohio State Journal on Dispute Resolution* 199 (1997) (1997 Student Article Award Winner)

The article outlines the problems that arise in resolving director and officer indemnification through litigation and examines arbitration as an alternative.

Wilson, Jack, "*No-Class-Action Arbitration Clauses," State-Law Unconscionability, and the Federal Arbitration Act: A Case for Federal Judicial Restraint and Congressional Action*, Quinnipiac L. Rev., 2004 (2004 CPR Award Winner)

This paper analyzes recent cases involving 'no-class-action arbitration clauses' in the light of the text of the FAA and its interpretation by the

Supreme Court and suggests a new federal statue that would enforce such clauses provided that they met certain objectively reasonable standards while avoiding the pitfalls of burdensome, inefficient, and unpredictable case-by-case litigation

ETHICS

CPR-Georgetown Commission on Ethics and Standards of Practice in ADR. *Model Rule of Professional Conduct for the Lawyer as Third-Party Neutral*. (CPR, November 2002)

The final version of the Model Rule of Professional Conduct for the Lawyer as Third-Party Neutral was released on November 4, 2002. CPR President and CEO Thomas Stipanowich calls the Model Rule "one of the most important efforts to address the murky boundary between traditional law practice and the burgeoning role of lawyers as mediators, arbitrators and neutral interveners in conflict." According to Stipanowich, the Model Rule "has already influenced standard-setting at the national and state level, and will continue to serve as a talisman for future efforts."

CPR-Georgetown Commission on Ethics and Standards of Practice in ADR, *Principles for ADR Provider Organizations* (CPR, May 2002)

On May 1, 2002, the CPR-Georgetown Commission on Ethics and Standards of Practice in ADR released the final version of Principles for ADR Provider Organizations to provide guidance to entities that provide ADR services, consumers of their services, the public and policy makers. The nine Principles that comprise this effort are designed to offer a framework for responsible practice by entities that provide ADR services.

The Principles were released for public comment from June 1, 2000 through October 15, 2001. The final version reflects many of the substantive recommendations the Commission received during the comment period.

Dirks, Katherine "Ethical Rules of conduct in the settlement of Mass Torts: A proposal to revise rule 1.8(G)" New York University L Rev. 83:501, April 2008 (2008 CPR Student Award Winner)

The article analyses the fact that rule 1.8(G) requires that an aggregate settlement should obtained the consent of each client before it is final and how it does not meet the complex demands of mass torts. The writer proposed a modified rule 1.8(G) for the mass torts, drawing a procedure used in asbestos bankruptcies.

Georgetown Symposium Issue, "Restatement of the Law Governing Lawyers," *10:4 The Georgetown Journal of Legal Ethics* 541 (Summer 1997)

A series of articles discussing the Restatement of the Law Governing Lawyers, commenting on conflicts of interest, protection of clients, fees, the use of ADR, and attorney-client privilege. Authors include: Nancy Moore, Thomas Morgan, Stephen Gillers, John Leubsdorf, Carrie Menkel-Meadow, Geoffrey Hazard, Charles Wolfram, and Sherman Cohn.

Kirtley, Alan, "The Mediation Privilege's Transition from Theory to Implementation: Designing a Mediation Privilege Standard to Protect Mediation Participants, the Process and the Public Interest," *1995 Journal of Dispute Resolution* 1 (1995) (1995 CPR Award Winner)

The tension between a need for confidentiality within the confines of mediation and the public's interest in access to information is examined.

Menkel-Meadow, Carrie, "The Silences of the Restatement of the Law Governing Lawyers: Lawyering as Only Adversary Practice," *10:4 The Georgetown Journal of Legal Ethics* 631 (Summer 1997) (1998 CPR Award Winner)

A scholarly article examining the Restatement of the Law Governing Lawyers and whether it addresses issues that arise in ADR practice. The author concludes that the Restatement does not and proposes recommendations for an applicable rule.

Menkel-Meadow, Carrie & Michael Wheeler, *What's Fair: Ethics for Negotiators*. (Jossey-Bass, 2004) (A Publication of the Program on Negotiation at Harvard Law School)

This book provides and overview of ethical frameworks developed by several of the major leaders in modern negotiation theory, orienting readers to the moral implications of five major issues in the practice of negotiation. The book provides expert opinions on issues of truth-telling, candor, and deception in negotiation, tactics and strategic behavioral choices, relations with opponents, adversaries, partners and counterparts, relationships of agents and principles and the role of morality in negotiation, and the social influence on negotiators and external social impacts of negotiation outcomes.

South Texas Law Symposium Issue, "The Lawyer's Duties and Responsibilities in Dispute Resolution," 38:2 *South Texas Law Review* (May 1997)

A series of scholarly articles that focus on a multitude of ADR policy and practice issues, including the creation of uniform standards, confidentiality, good faith and integrity, mediators' role in evaluating and advising, and the role of the attorney.

SYSTEMS DESIGN

Cronin-Harris, Catherine, *Building ADR into the Corporate Law Department: ADR Systems Design*. (CPR, 1997) and *Building ADR into the Law Firm: ADR Systems Design*. (CPR, 1997)

The Corporate Law Department book profiles ADR programs at 23 major corporations and presents ADR tools and forms used by companies such as BASF, GE and Motorola. The Law Firm ADR book catalogs the best practices in law firm ADR systems design, including useful practice tools and forms.

Costantino, Cathy A. and Christina Sickles Merchant, *Designing Conflict Management Systems*. (Jossey-Bass Publishers, 1996)

This book presents a practical, step-by-step approach that integrates concepts from organization development, ADR and dispute system design principles to assist in the assessment and management of conflict. Case studies are drawn from the health care, government and manufacturing sectors.

Ertel, Danny and Ralph C. Ferrara. *Beyond Arbitration: Designing Alternatives to Securities Litigation*. (Butterworth Legal Publishers, 1992) (1992 CPR Award Winner)

In the context of securities disputes, the authors introduce a method for designing dispute resolution procedures. Recommendations and proposed model procedures are provided for fraud class actions, shareholder disputes, and SEC enforcement actions.

Krusl, Timothy C., "The Federal Arbitration Act: Easing its Restrictions on the Enforcement of Third-Party Subpoenas in Arbitration," Dispute Resolution Journal, Vol.. 57, No. 4 (November 2002-January 2003)

This article advocates that federal courts should be given the authority to enforce an arbitration panel's subpoena even if parties do not agree to discovery. It also proposes to amend the FAA to permit nationwide enforcement of this pre-hearing discovery in the context of an arbitration proceeding in order to allow arbitrators to obtain and preserve material information, while balancing the interests of parties and non-party witnesses.

Lande, John. "Principles for Policymaking About Collaborative Law and Other ADR Processes" 22:3 The Ohio State Journal on Dispute Resolution 619 (2007). (CPR 2007 Award Winner – Professional Articles)

This article argues that the temptation to make policies governing Alternative Dispute Resolution (ADR) processes primarily by adopting new rules should be resisted. The author argues that relying exclusively, or primarily, on regulation can create significant problems for ADR. In light of such problems, the author calls for greater consideration of various non-regulatory means by which ADR policy goals can be achieved. He sets out four key recommendations for policymaking in this area, namely, the use of dispute system design analysis with an ecological perspective of dispute resolution, the provision of a variety of desirable processes for disputants and stakeholders, the consideration of a range of policy options recognizing the limits of regulation and the development of an appropriate relationship between ADR innovations and the contemporary dispute resolution system. Through a critique of the Collaborative Law (CL) proposals of Professors Christopher Fairman and Scott Peppet, the article explains that ADR has much to learn from CL's achievements and challenges. The author concludes the article by calling for greater commitment to certain key principles which, he believes, will be more effective in improving the ways people handle their disputes.

Reuben, Richard C., "Democracy and Dispute Resolution: Systems Design and the New Workplace," 10 *Harv. Neg. L.R.* 11, (Spring 2005)

The author of this article demonstrates how principles of democracy may be applied in the non-union corporate dispute resolution scheme of the newly emerging workplace. The article describes the structure and values of the new workplace and demonstrates how the values that support the new workplace are consistent with democratic values in the traditional governmental context.

The author also shows how the evolution of the new workplace may be seen as a democratization of the workplace, where dispute resolution as a necessary component is important to consider. In addition, the author demonstrates how these democratic values can be promoted or frustrated by a dispute resolution systems designer's choice of dispute resolution method or methods in non-union workplaces. The article investigates the democratic character of two primary methods of Alternative Dispute Resolution, arbitration and mediation in more depth.

Shariff, Khalil Z., "Designing Institutions to Manage Conflict: Principles for the Problem Solving Organization," 8 Harv. Negotiation L. Rev. 133 (2003) (2003 CPR Award Honorable Mention Winner)

This article rests on the premise that managing ongoing conflict peacefully is a task of many social institutions, but that the prescriptions generated by the dispute resolution literature have focused primarily on improving individual behavior. The author presents the case for adding an explicitly institutional focus to the prescriptive agenda of dispute resolution scholarship. The article confronts the challenges of translating dispute resolution research into prescriptions for institutional design by identifying five key dimensions along which institutional design decisions are made, then derives a set of design principles along each dimension based on certain findings from the literature. The article applies these principles to the designs of the international settlement of post-Taliban Afghanistan as imbedded in the Bonn Agreement of 2001.

Slaikeu, Karl A and Ralph H. Hasson, *Controlling the Costs of Conflict - How to Design a System for Your Organization*. (Jossey-Bass, 1998)

This book offers practical guidance for the establishment of systems that promote collaboration when disagreements arise. The mediation model is cited to build consensus among decision makes and users.

Ury, William L., Jeanne M. Brett and Stephen B. Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*. (Jossey-Bass, Inc., 1988) (1988 CPR Award Winner)

The authors offer tested guidelines for the design of a dispute resolution system that will help handle conflicts effectively on an ongoing basis. They explain how to diagnose and correct problems that may be present in an existing dispute resolution system or that may arise in the creation and implementation of a new system. They also include a four-phase process for working with disputants.

GENERAL REFERENCES

Alternatives, CPR Institute For Dispute Resolution.

Alternatives is the premiere national newsletter covering cutting-edge dispute resolution trends and information. It is an authoritative guide for using ADR at companies, firms and courts. *Alternatives* is a monthly source.

adrworld. com.

An online ADR reporting service that provides focused daily updates and developments in the field.

Arrow, Kenneth, Robert H. Mnookin, Lee Ross, Amos Tversky, and Robert Wilson, *Barriers to Conflict Resolution*. (W. W. Norton & Company, 1995) (1995 CPR Award Winner)

In this book members and associates of the Stanford Center on Conflict and Negotiation address the complex issues that protect disputes and turn potential win-win negotiations into conflicts. Why do negotiations so often fail even where there are possible resolutions that obviously serve disputants better than protracted struggle? And why, when resolutions are achieved, are they so often suboptimal for the parties, or achieved only after heavy and avoidable costs? Drawing on such diverse disciplines as economics, cognitive psychology, statistics and game and decision-making theory, the book considers the barriers to successful negotiation in such areas as civil litigation, family law, arms control, labor management disputes, environmental treaty making and politics.

Auerbach, Jerold, *Justice Without Law?* (Oxford University Press, 1983) (1983 CPR Honorable Mention)

An historical view of dispute settlement in the United States is set forth. An examination and impact of the choice of litigation over dispute resolution on the US society is provided.

Dauer, Edward A., *ADR - Law and Practice*. (Juris Publishing, 2000) (Author is winner of a 1994 CPR Award)

This comprehensive sourcebook is a multi-faceted guide and provides assistance in many areas including the selection of ADR processes, conflict management and pre-dispute agreements, and legal considerations (confidentiality, statutory restrictions, finality, constitutional issues).

Deutsch, Morton and Peter T. Coleman (editors), *The Handbook of Conflict Resolution, Theory and Practice* (2000, Jossey-Bass Inc.) (2000 CPR Award Winner)

A compendium of articles that links theory and practice across a wide range of conflict resolution areas – interpersonal, intergroup and international. Enhances understanding, basic psychological processes involved in any type of conflict.

Folger, Joseph P. and Marshall Scott Poole, *Working Through Conflict: A Communication Perspective* (Scott, Foresman and Co., 1984) (1983 CPR Honorable Mention)

This book presents the idea that not only can people successfully work through conflicts, but that productive work can be accomplished through conflict. The forces that generate conflicts and the techniques that can be used to direct theses forces toward productive ends are examined. Conflict is viewed from a communication perspective. The book advances a model of conflict interaction shaped by four forces - working habits, climate,

power, and face-saving and suggests numerous strategies and tactics for moving conflicts in productive directions.

Goldberg, Stephen B., Eric D. Green, and Frank E.A. Sander, *Dispute Resolution: Negotiation, Mediation, and Other Process*. (Aspen Law & Business, Third Ed., 1999) (Earlier Edition - 1985 CPR Award Winner)

A classic textbook on Dispute Resolution, the authors have included a series of leading articles, thought-provoking questions, exercises /simulations, and references, to teach negotiation, mediation, and arbitration. The role of courts and other public policy issues are examined in addition to international disputes and the future of ADR.

Hammond, John, Ralph L. Keeney, and Howard Raiffa, *Smart Choices: A Practical Guide to Making Better Decisions*. (Harvard Business School Press, 1999) (1998 CPR Award Winner)

An accessible book for the general reader that provides a straightforward process for making virtually any kind of decision — professional or personal. Combining solid research, theoretical insights and common sense, authors Hammond, Keeney, and Raiffa articulate a set of steps for defining a problem, clarifying objectives, and evaluating alternatives.

Harper, Gary, *The Joy of Conflict Resolution: Transforming Victims, Villains and Heroes in the Workplace and at Home,* (New Society Publishers, 2004)

This book illustrates the patterns of conflict and identifies the roles people play in disputes. Readers will learn basic skills to help create more productive roles, to move beyond impediments to cooperation, and to resolve conflicts collaboratively. Using fairy-tales, Hollywood movies, and role-play, this book helps readers understand how to use curiosity to create a more complete picture of the conflict, to use empathy to build bridges, and to use assertion to separate the person from the problem. Each chapter provides an opportunity to apply the concepts and skills described to real-life conflicts.

Jones, Tricia S. (editor), *Conflict Resolution Quarterly*. (Jossey-Bass)

This quarterly publication provides a resource for scholars and practitioners. The May 2004 special double-edition, *Conflict Resolution in the Field: Assessing the Past, Charting the Future,* provides a comprehensive review of conflict management and dispute resolution in the fields of family, court, and community mediation, workplace dispute resolution, environmental conflict resolution, conflict resolution education, and victim-offender mediation and restorative justice.

Lipsky, David B and Ronald Seeber, *The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by U.S. Corporations*. (Cornell/PERC Institute on Conflict Resolution, 1998)

A comprehensive and insightful survey of 606 of the largest U.S. corporations. The survey reports on the growing use of ADR techniques, triggering events leading to the use of ADR and the use of ADR in international settings.

Mayer, Bernard S., *Beyond Neutrality: Confronting the Crisis in Conflict Resolution*. (Jossey-Bass, 2004) (2004 CPR Award Winner)

This book challenges assumptions in the field of conflict resolution, explores current problems in the field and offers possible responses. The book looks at practice research, basic beliefs and assumptions, and the role of conflict resolution in society, argues for a refocus on conflict engagement and a new definition of the role of neutrals as conflict specialists, and explores the advocate's role in facilitating these changes.

Riskin, Leonard L. and James E. Westbrook, *Dispute Resolution and Lawyers*. (West Group, Second Edition, 1997)

Comprehensive textbook prepared for use as a supplement in standard first year and other law school courses and for courses that teach interviewing, counseling, negotiation and mediation. An Abridged Edition is also available, which can be a valuable resource to lawyers by helping them understand what they need to know about various methods of preventing or resolving disputes.

Singer, Linda R., *Settling Disputes: Conflict Resolution in Business, Families, and the Legal System*. (Westview Press, Second Edition, 1994) (Earlier Edition - 1990 CPR Award Winner)

This book provides a concise overview of dispute resolution alternatives, their historical context, criteria for their selection and examples of their use. A sophisticated discussion of alternative dispute resolution processes and related issues is provided within the framework of specific disputes - family, business, consumer and employment, communities, and public.

Stone, Douglas, Bruce Patton, Sheila Heen, *Difficult Conversations - How to Discuss What Matters Most*. (Viking, 1999)

Written in layperson's terms, this book skillfully teaches the effective communications approaches when faced with relationships and difficulties filled with tensions.

University of Chicago Symposium Issue, "Litigation Management," *53:2 The University of Chicago Law Review* (Spring 1986) (contains CPR Award Winners)

Compilation of articles and insights from numerous leaders and scholars: "Managing Judging and the Evolution of Procedure" (E. Donald Elliot); "The Role of Judges in Settling Complex Cases: The Agent Orange Example (Peter H. Schuck); "The Summary Jury Trial and Other Methods of Alternative Dispute Resolution: Some Cautionary Observations" (Richard A. Posner); "Special Master in Complex Cases: Extending the Judiciary or Reshaping Adjudication?" (Wayne D. Brazil) (1985 CPR Honorable Mention); "Lessons from the Alternative Dispute Resolution Movement," (Jethro K. Lieberman, James F. Henry); "Toward a Functional Approach for Managing Complex Litigation," (Francis E. McGovern) (1986 CPR Award Winner) and "Failing Faith: Adjudicatory Procedure in Decline" (Judith Resnik).

Yarn, Douglas H. (editor), *Dictionary of Conflict Resolution*. (Jossey-Bass, Inc., 1999)

A comprehensive and pioneering dictionary. Definitions to over 1,400 terms taken from a broad spectrum of ADR publications are provided.