

PREFACE

Eight years have elapsed since we first conceived the possibility of writing this book. Why did we undertake it? What were our goals?

First, candidly, we were frustrated. As longstanding teachers and practitioners of mediation, we had spent years looking for and trying to cobble together written materials that taught about the process and skills of mediation in effective, realistic ways. A good deal of the literature in the field seemed to us too simplistic; some seemed to hew to a single, monolithic view of the process and the “correct” role of the mediator.

We wanted to teach about mediation contextually, demonstrating—as our experience tells us—that the process cannot be reduced to a simple, “one-approach-fits-all” handbook, but rather looks quite different when applied in different conflict settings. At the same time, we appreciated that students needed a model to apply, and we set out to provide one. In doing so, we sought to equip them with the ability to assist in the whole spectrum of disputes—from tough, lawyered, zero-sum money problems to pure “relational” conflicts, and everything in between.

Second, as with other clinical fields that largely concern process, we believed that simply reading about mediation without seeing it in action was far from optimal. Perhaps because of teaching time limitations or the desire to portray mediation in ideal terms, many of the existing videos at the time were highly compressed and seemed to us rather unrealistic. Indeed, one could have concluded from some of this material that mediating was typically easy, even “magical” in its sudden, win-win endings.

We wanted to portray the process in all of its real-world richness and complexity: its slowness; its “one-step-forward, two-steps-backwards” character; the arduous challenges mediators face when attempting to resolve deeply held or competitively bargained differences; the psychological, emotional and strategic minefields that are often encountered in mediation; and, yes, the collaborative, reparative and occasional transformative moments in mediation that can make the process so deeply rewarding.

Third, all teachers face the scarcity of classroom time and must deal with coverage concerns. Clinical teachers—preparing students to be able to perform as well as master theory—are especially pressed in this way and often must limit in-class use of video. We therefore decided to create and include in each copy of the text a DVD, depicting a wide variety of mediation problems, settings and styles, that would enable students to view video extracts as part of their homework and help instructors save valuable class time.

Fourth, it seemed to us that much of the mediation literature was of two types: largely descriptive, anecdotal and “how-to-do-it” writing about mediation by

practitioners on the one hand, and deeply theoretical writing about disputing (sometimes not all that reflective of practice) on the other. We wanted to marry these two worlds if possible, grounding our text and videos in the most current research available from social science, communications, sales and other disciplines, while at the same time exposing students to the insights and perspectives (even if untested) of experienced practitioners in the field.

Finally, we felt that a book written this way would help students perform generally in a stance that is pervasive in practice but largely ignored by contemporary legal education — that of the neutral. Whether they are counseling a client dispassionately, trying to break a negotiating logjam to solve a problem, adjusting differences between co-clients, chairing a potentially contentious departmental meeting or (as a few of our students will do early in their career) actually serving as a mediator — lawyers and other professionals must draw on mediative skills far more often than the partisan skills that are so prominently featured in law school classes and in popular culture. Thus the “voice” of this book, unlike most other books in the field, is decidedly that of the neutral.

This has been a long and happy partnership. One knows that a true collaboration has occurred when it is difficult to recall who wrote which paragraph, or came up with what phrase. We certainly did not anticipate when we started how much time it would take us to write the book, much less complete all the detail work involved in constructing, filming and editing three mediation problems involving nine different neutrals, and deciding how to integrate these materials into the text. We have enjoyed (almost) every minute of it, cementing and deepening our friendship along the way.

We hope that you derive as much pleasure using these materials as we did preparing them. Please let us know what you think.

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