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- Ideas for Starting Out
- Should I Quit My Day Job?
- Making Peace and Making Money
“I enjoy teaching the Arbitration and International Commercial Arbitration courses at Pepperdine because of the camaraderie among the faculty and the caliber of the students. Sharing my perspectives from serving on the US-Iran Claims Tribunal at the Hague and then on the Swiss Bank Holocaust Claims Tribunal in Zurich with the mix of US and international LLM students, mid-career MBA students, and J.D. students makes the classroom stimulating and enjoyable for the students and me. Having experienced attorneys in the class raises the level of discourse and insures that the content must be real, translating theory into practice.”

Roger Alford
Professor of Law

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YOU, our readers and members, have spoken. You tell us often of your interest in publishing and CLE programming aimed at practice development issues: How do I start a neutral practice? How do I grow one? The editorial board of our magazine has heard you loud and clear, and this issue of the magazine is devoted to those concerns.

I want to call attention to a particular perspective on starting and growing a practice in the ADR field. I am referring to the need both for individuals in the field, and for the field itself, constantly to learn and relearn the best ways to provide quality services in mediation, arbitration, and other ADR processes and to meet the reasonable expectations of users of our services. Better quality practice serves the individual career goals of our members, and it serves the public, the legal profession, and the larger ADR community. To underscore the importance of providing quality services in ADR, I intend to focus some of our Section activities this year on improving the quality of the ADR services.

Important developments in the ADR field during the last decade underscore the requirement for participants to learn and evolve, both thoroughly and rapidly: newly developed and documented understandings of the expectations and concerns of users of mediation and arbitration, substantial changes in the legal and ethical framework of mediations and arbitrations, and changes in career paths in the ADR field.

Although user expectations are not necessarily conclusive in defining quality practice, our field will benefit from continuing attention to them. The Section’s Task Force on Improvement of Mediation Quality conducted focus groups and surveys of mediation users. Its 2008 report indicated that many lawyers in mediation in civil cases wanted mediators to spend time preparing for the mediation, to have certain process and subject-matter expertise relevant to their case, to “customize” the process for each given case, and to provide “analytical” assistance to parties. (The full report is available online at www.abanet.org/dch/committee.cfm?com=DR020600.) A recent project by the College of Commercial Arbitrators that we enthusiastically addressed concerns of business-to-business arbitration users about cost and delay. The 2010 CCA Protocols identified nearly 50 specific guidelines for use by arbitration users, inside and outside counsel, arbitrators, and providers that will permit users to achieve arbitration’s goal of reaching a fair and effective result quickly and economically.

In recent years, we have witnessed significant developments relating to the most fundamental scriptures of mediation and arbitration, and our Section has exercised leadership roles in all of these efforts. In 2002, the ABA modified the Model Rules of Professional Conduct, which for the first time meaningfully addressed ADR roles of lawyers. The ABA House of Delegates also approved the Uniform Mediation Act in 2002 and adopted the Model Standards of Conduct for Mediators in 2005. The Revised Uniform Arbitration Act was passed by the House in 2002, and the Code of Ethics for Arbitrators in Commercial Disputes was approved in 2004. The Supreme Court of the United States, and numerous federal and state courts, have addressed issues having tremendous impact on arbitration, e.g., how arbitration applies to consumer and employment disputes, whether class actions are appropriate for arbitrations, and when courts may overturn actions of arbitrators.

In a relatively recent timeframe, we have witnessed substantial changes in career choices for ADR professionals: many lawyers and other professionals focus their careers, or specialize, in neutral service disconnected from a traditional lawyering or other non-ADR day job; ADR clients often demand both process expertise (e.g., established mediation or arbitration neutral skills) and subject-matter expertise from the neutrals they hire (employment, construction, family, environmental, etc.); and law students, energized by taking several ADR courses and clinics, are looking for ways to start careers in ADR right out of law school. The ability to perform quality work in ADR requires the same sort of serious commitment to the field as is made by the many lawyers who have chosen to specialize their practices in such disparate legal practices as family law, health care, intellectual property, criminal law, or tax law.

So, let’s go back to the main point: business development and promotion for you and our field. Quality practice is an essential ingredient. I hope you, our members, will take advantage of all that we offer in order to improve upon your own personal skills and thereby help develop your practice. I also hope that you might actively engage with us as a member in order to help us to succeed in improving quality practice in the ADR field.
Top 5 Reasons to Choose Missouri

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Missouri was the first U.S. law school to offer an LL.M. exclusively focused on dispute resolution. Missouri consistently ranks as one of the top law schools in dispute resolution.

FACULTY
Our scholars generate important work influencing dispute resolution theory and practice around the world. We have one of the largest collections of full-time law faculty who focus on dispute resolution, publishing leading articles and texts.

CURRICULUM
Our program blends theoretical analysis, practitioner skills, and systems design work.

COMMUNITY
Our classes are small, creating a close community among faculty and students, forming lifelong bonds for networking and future collaboration. Classes generally are limited to LL.M. students.

DIVERSITY
Our student body is diverse – by age, race, nationality, legal background – which enriches the level of discussion inside and outside the classroom.
“Could we have lunch some time? I have been thinking that I would like to be a mediator, and I was wondering if you could give me an hour of your time so that I can learn to do what you do.”

Every experienced mediator has fielded such a phone call on many occasions.

Often the caller is an older litigation attorney who has participated in several mediations and has come to believe that mediation is better than litigation. Not necessarily suffering from litigation burnout, the attorney is looking to expand the scope of his or her practice with the eventual goal of moving to the middle and becoming a “full-time” mediator. Sometimes the caller is younger—someone who has experienced mediation through a law school course, community service, or work as a second chair in a mediation. Sometimes the caller is a person who has heard and rejected the old advice, “Don’t give up your day job.”

In all cases, many people want to know how to enter a profession that has no prescribed path. The theme of this issue of the Dispute Resolution Magazine is “Marketing Mediation.” Authors offer insights on this topic from various perspectives. This article focuses on the basics: recommended first steps for those who want to enter this field.

1. Write a Short Essay to Yourself
Topics: Why I want to be a mediator and why anyone would employ me as a mediator. The purpose of this essay is to answer those questions for yourself. Give yourself a short deadline.

Many people muse about mediation and whether they have the right stuff and should try to be a mediator. There is no correct answer to these questions. Those who actually decide to become mediators usually have diverse reasons to do so and varied packages of skills or experience to offer. The answers you give yourself will help shape what you then do to fulfill your goals. If you have a mentor or coach, you might want to share a copy of your essay with that person. Continue with the next steps only if you feel a strong personal sense of commitment, even passion, about your desire to be a mediator.

2. Write Your Mediator Bio
Take a current bio or CV, keep your name, delete all remaining text, and save as “My mediation bio.” Go online to websites for mediation service providers and read 20 to 30 different mediators' bios from three or more websites. Pick the best sample(s) and create your template. Be honest. When you start to write your own bio, you will necessarily have many blanks—gaps in your training and experience. Filling in those gaps with

Mediation Marketing
Ideas for Starting Out

By James E. McGuire
real substance is the beginning of your training and marketing plan. For now, even if you have not mediated a case, you may have relevant subject-matter expertise based on work that you did in negotiating business deals or litigating cases in specific areas. The combination of your subject-matter expertise and solid mediation training may be enough to obtain your first engagements as a mediator. This is a profession that is built more on personal reputation than paper credentials. Honesty and a commitment to the process are the essential attributes of any successful mediator.

3. Take a Basic Mediation Training Course
All responsible, credible mediators do so. Those who think that 25 years on the bench or at the bar somehow qualify as mediation training are wrong. Our code of ethics requires that we be trained. The marketplace will reward those who are. Besides, it is fun. If you have taken a basic course, look for training and skills enrichment courses.

4. Start Reading
The mediation field is rich in written resources. A trained and qualified mediator is expected to be conversant with our literature. Have you read Getting to Yes? Good. Have you read Getting Past No? That’s the book you need to know what to do when the other side hasn’t read Getting to Yes. If you are serious about being a mediator, you cannot afford to wait to learn the language. Your training course will assume you know something about the language, the theory, the process, and the pitfalls. [If you send me an email referencing this article, I will send you my suggested reading list. It is like the Sunday New York Times; you don’t have to read it all, but it is nice to know that it is all there.]

5. Get Connected
At the national level, you should become a member of the ABA Section of Dispute Resolution, and perhaps a member of the Association for Conflict Resolution as well. At the state and local level, you should become a member of the dispute resolution group of your state or local bar association. You also should become a member of some nonlegal mediation or ADR group. You also should get a mentor or a coach. Many organizations provide matching services. As you make connections, you also can ask for help. Most experienced mediators have helped others get started in this profession.

6. Pay Your Dues: Volunteer to Mediate
The fastest way to gain mediation experience is to volunteer to mediate. In most jurisdictions, court-connected mediation programs depend upon volunteer mediators for small claims and lower-level trial court cases. Most mediators have provided free services, either because it was the right thing to do or because it was a way of getting started. Many find mediation to be a rich and rewarding experience without being paid for their services. Your answers to yourself in the essay you will write will help you understand where, when, and how much volunteer mediation will make sense for you.

7. Practice in Your Own Backyard
If you are a member of a law firm (partner or associate) or a member of a corporate law department, you have major opportunities to sharpen your skills, market yourself as a mediator, and help your own organization starting immediately. Most likely, your firm does not now have a well-developed ADR practice group. If it does, join that group. If it does not, create that group. An ADR practitioner should become the firm resource center for ADR. Internal educational programs are a very effective way to sharpen skills and make the firm aware of your skills as a mediator and ADR specialist. Developing materials for the business lawyer on drafting ADR clauses, training partners and associates on mediation advocacy techniques, conducting internal negotiation training, and providing presentations to members of the firm on ADR topics are just some of the ways to increase your ADR presence in the firm and through the firm to the legal community.

8. Look for Educational and Speaking Opportunities
Even in the twenty-first century, people collectively still need to know more about mediation: what it is, how it works, how to prepare for and participate in it, what it costs, and how to find a good mediator. There is a logical link between the practice you are trying to build and the places where you want to speak. In your preferred practice area, who are the gatekeepers? Who are the people that those in need of mediation services are likely to seek out for advice? Put education first and prepare talks that offer some substance—some practical tips and

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advice relevant to the group. Build on the work you have done inside your own organization. Your presence and presentation (and your contact information) are still the best forms of soft and effective marketing.

9. Write Something
Articles written by you on topics important to you also will find a receptive audience. Avoid the disturbing current trend of paying some organization lots of money to write and place articles that are “yours” in name only. The Model Standards of Conduct for Mediators provides in Rule IX that mediators should do things that advance the practice of mediation. Mediators may meet this obligation by “participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.”

10. Primacy and Recency
People are most likely to contact the person who first introduced a useful idea or the person who most recently discussed that idea. As applied to mediation, that means marketing is an ongoing process. People who first heard about mediation or thought about using it in their future disputes because of something you said or wrote are more likely to contact you. People that used you as a mediator for their first mediation will likely use you again if they can remember who you are and how to contact you. For most mediators, the best sources of new business are contacts from old business—satisfied participants in a mediation process. So an effective marketing strategy must include some way for you to keep track of who those people are and some way to keep your name in their brains or at their fingertips so that they think of you when the actual need arises.

To become an effective and experienced mediator requires developing and implementing a plan to acquire the necessary training, experience, and public awareness. Although the process can be fun and should be interesting, those who create plans are most likely to succeed. The milestones that you create will be your best indicator of how successful you are in implementing your plan. Be realistic about how much you can do, but challenge yourself with real dates and deadlines. It helps to have a mentor or a coach, even if just for the purpose of having someone with whom to share your success stories. The very process of creating and sharing your work plan with another makes it more likely that you will follow it.

12. Web Awareness
In the twenty-first century, promoting any service requires consideration of the Internet for marketing and communications. In the articles that follow in this issue, others will provide insights on what to do and what to avoid in using the Internet as part of your marketing program.

There is a logical link between the practice you are trying to build and the places where you want to speak. After you’ve completed these steps, or if you have already taken these steps and are looking for ways to establish and grow your mediation practice, what’s next? In this issue, authors with experience in building and marketing mediation services provide some guidance.

Experienced mediators Lisa Brogan and Alex Yaroslavsky compare notes on two different pathways into the profession. Continuing to compare notes, they offer different insights on training, on the importance of mentors, and on other resources that helped them build successful mediation practices.

Joshua Gordon, a younger mediator now specializing in sports conflict management (Competition Not Conflict), stresses the importance of personal reputation as the key to marketing success. He also discusses the importance of finding the right niche by specializing in areas where you have a personal passion.

Judy Bodenhamer, a professional marketer with experience working with ADR practices, provides a “twelve-step” program for marketing. She stresses the need to develop a marketing plan and then implement that plan.

We hope that you will share with us your comments about this issue and the focus on marketing mediation. Dispute Resolution Magazine is considering making marketing a regular feature in future issues. Will you please let us know your thoughts?◆

Endnotes
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When asked to share my experiences in building and marketing a successful ADR practice, I began with the fundamental question that so many of us in the ADR field are frequently asked: “What is the typical career path for someone interested in dispute resolution and conflict management?”

There are many professions where this is a perfectly reasonable question with a fairly consistent answer. Try Googling “how to become a lawyer” or “how to become a doctor,” and you will find a flood of articles articulating a fairly clear path to join the profession and have a successful practice. Google “how to become a mediator” and the answers become quite a bit more vague, something along the lines of “check to see if there are any licensing or certification requirements, get yourself some training, practice your skills, and join some associations.” Simple, right? Not even close.
The purpose of the article is to discuss some of the critical activities necessary for building and marketing a successful ADR practice. By no means is this a prescriptive recipe that guarantees success. Instead, it offers some important considerations and a few tactical suggestions.

Roles May Come and Go, but Reputation Is Forever
I have had the good fortune of being part of a number of ADR organizations over the years. At times, the lack of a linear career path has left me wondering how a particular project or case connects to the bigger picture of my career goals. The best pointer I can offer here is that the ADR community is quite small, and our personal reputation, or brand, is the one consistent product we produce. We do not make widgets, and, in fact, there may be a danger in becoming too closely connected to the outcomes of our process. Instead, we make a reputation for ourselves and the organizations we represent.

Having a good reputation even can overcome a lack of clarity about your organization’s mission. For example, when I worked with the Consensus Building Institute, people consistently would say, “I don’t really know what CBI does, but I know that they are excellent!” We had little trouble finding very interesting work at CBI. Reputation is king in the chess game of building a practice.

How Does One Build a Good Reputation?
To me, the foundation for reputation is education. To add another cliche, theory informs practice and practice informs theory. The diverse set of skills needed as both a practitioner and entrepreneur—and let’s be very clear: to be successful in ADR you must not ignore the business realities—is a delicate blend of theory and practical experience. For me, it was critical to learn from the best, brightest, and most reputable scholars and practitioners in ADR. That meant actively seeking out Janet Rifkin, Albie Davis, David Matz, Jim McGuire, Leah Wing, and so many more who had a reputation for success and integrity and a desire to guide me as I learned and gained experience. You have to find your “people” who can help make you excellent at the work we do to appropriately develop a foundation for earning the reputation necessary to thrive in this field.

No Connections Disappear
In ADR, the relationships that you build are crucial to building a successful career or practice. The relationships I made back in 1992 when I first dove into this profession remain relevant and important today. In my current role as director of the Competition Not Conflict (CNC) Program at the University of Oregon School of Law and faculty with UO’s Conflict Resolution Program, I regularly seek guidance, advice, and partnership from the many folks who have helped guide my growth over the past 18 years. If I have any regret, it’s about not always being as effective as I’d like about telling all of these people how important they were and are to me professionally and personally.

Should I Generalize or Specialize?
Reputation is necessary for building a practice, but putting clarity into the type of work we wish to engage in is awfully high on my priority list. However, this is a far more difficult challenge than one might imagine. As a newly trained mediator or consensus builder, one has a very practical need to bring in work or earn a living. On the one hand, it is essential to get as much experience as possible. On the other, we can’t expect to be excellent in all contexts. Often we are forced to be generalists just to keep a steady flow of work coming in. This creates an enormous challenge, however, in effectively communicating your services and in developing a niche of expertise. For years, my range was so diverse that one day I’d be working on gang-related youth violence and the next I’d be engaged in a large consensus-building exercise around the future of energy for Alaska.

As I look back, I think about the importance of analyzing one’s practice area through a more personal lens. What do you really like to do in your free time? Is there an opportunity to integrate that into your practice area? Professionally, I’ve enjoyed each and every context that I have been fortunate to practice in. Personally, I’m a

Joshua Gordon, director of Competition Not Conflict at the University of Oregon School of Law, is an experienced mediator, facilitator, educator, and organizational capability builder. He can be reached at gordon@competitionnotconflict.com.
Sports junkie. I spend a significant amount of my free time training for competitive running events, watching baseball or football, and dreaming of tennis matches. For a number of years, I kept these two things separate. Over the past few years, I realized that sports are at the core of who I am and how I experience the world, so it became a natural transition to take over leadership of a program that focuses on supporting competition through understanding, preventing, and resolving sports conflict. It’s a great fit for me and keeps me passionate and energized on a consistent basis.

I advise some soul-searching in trying to work toward that niche that excites you. It is understandable to generalize for practical reasons, but ultimately I think one must specialize to thrive.

Pro Bono or Not?
Another difficult dilemma in ADR practice building is deciding how often to offer our skill set and labor at no charge or reduced fee. It’s a labor of love for most of us, and there is a tendency to give our time away in support of our passion for our ideals.

Do this cautiously. I think it is important to understand the value of what we provide in this profession. If you do think it is essential to take on a case or project without charge, consider creating a grant structure to assist with funding for those who cannot easily afford our services so that access remains, but we don’t devalue the work we do. I think this becomes increasingly important as you become a more seasoned practitioner or program. At first, it may be necessary to demonstrate your value and gain your experience, but try to do so with purpose. It is a profession and not a hobby.

Don’t Be a Luddite
Use technology. LinkedIn and Facebook are excellent tools for establishing professional connections, sharing thoughts on our profession, and furthering your reputation as an expert in your area. LinkedIn is particularly relevant for ADR and is one of the few career-builder-type websites that has ADR listed as a profession. On the same note, write about your area of practice. Share your thoughts online. We get a lot of requests from those who we connect to at CNC on LinkedIn, Facebook, and our blog (http://competitionnotconflict.blogspot.com).

Stick to the Path
There is no easy, linear path to growing a career or practice in ADR. You may want to “keep your day job” when first getting started. Gain experience, build your reputation for excellence, and slowly start to seed and secure your cases and projects. Be thoughtful in your decisions. Reach out to those who have meandered the wandering path before you. Most importantly, develop proficiency in the work we do.
The Organizational Ombudsman: Origins, Roles, and Operations—A Legal Guide
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Should I Quit My Day Job?
Two Paths to a Career in ADR

By Lisa Brogan and Alex Yaroslavsky

If there is one phrase that you can almost be guaranteed to hear at any program on getting started in ADR, it is “Don’t quit your day job.” The common wisdom is that it takes three to five years, and if eating and maintaining a roof over your head are among your goals, then—well, you get the idea.

But this is not a one-size-fits-all world. We thought it would be interesting to show you how two practitioners entered the ADR profession—one by honoring the common wisdom, and the other flying in the face of it. Having come at it from two completely different standpoints, we sat down and asked each other some questions about our journeys.

What is your background?
Lisa Brogan: I’ve been a lawyer for 26 years, having gone straight from college to law school, so it’s the only work I’ve ever really known.

I did a few different things along the way, but the bulk of my career was spent as in-house counsel, where I focused on business and corporate matters, and employment law issues.

Alex Yaroslavsky: I have a different background. I started my career as a systems integration consultant. I wrote computer programs and did a lot of technical work at the beginning of my career.

Some of my assignments included speaking with users about their needs, as well as doing presentations explaining the benefits of the new systems I was developing.

I quickly discovered that I enjoy interacting with the users and liked getting to understand their concerns and needs. I didn’t know it at the time, but those are just the qualities useful to a mediator.

What led you to ADR?
LB: My company was involved in a complex commercial arbitration administered through AAA. I had worked for this company for 12 years, and we were facing one of our biggest challenges. A tremendous amount was riding on the decision of the arbitrators.

I sat in the room, day after day, trying to discern how they were leaning, wondering if their questions reflected where they would come out, wondering if we would survive the outcome of this whole affair.
I jumped back and forth between hopeful, nerve-wracked, and despondent, and finally just couldn’t wait for the whole thing to be over. Then I looked up at the head of the table at three men who, I trusted, would do their very best to understand the mountain of information being presented to them, and, in the most fair and just way they were able, render a decision. And then their work would be done. I wanted to be at the head of the table.

**AY:** When I was in graduate school, I saw a flier in my mailbox. A local community dispute resolution center was offering a free 40-hour mediation course. I didn’t exactly know what mediation was, but the price was right, so I signed up.

I completed the course and found that I really liked mediating. I also noticed that I had a certain amount of instinct for when to caucus, when to ask probing questions, when to be quiet and listen, and so forth. Still, if someone had asked me if mediation was going to be a large part of my professional life, I doubt I would have said yes.

After graduating, I returned to New York and began looking for a job in the finance industry, where I had previously worked as a consultant. One night I was channel surfing and noticed an ad for mediators on one of the local access channels. I remembered that I was a mediator, so I wrote down the number and called up the agency. Soon thereafter, I began mediating cases.

**How did you decide to go pro?**

**LB:** My experience in our company’s arbitration planted a seed, but it was several months before I committed to pursuing a career in ADR. I started out by attending a number of CLE programs on various ADR topics.

Arbitration was where I thought I was headed, but as I spent time listening to various speakers, I heard a lot about mediation, with which I had only fleeting familiarity; collaborative law, which I had never heard of; and hybrid and developing processes, which gave the field a depth and color that I found intriguing. I couldn’t make out the big picture—what it would look like in the end—but the more I listened, the more I believed that this was where I wanted to put my energy. I knew, perhaps for the first time, that my personal values and professional goals were firmly in sync, and that meant a great deal to me. It would take my first training to seal the deal, but in those early weeks and months, I never heard anything that gave me pause. Rather, it all made sense, and I knew, without the express written consent of the American Bar Association, without the express written consent of the American Bar Association.

For several years, mediation was something I did as a volunteer, on a part-time basis. Gradually, however, I began to meet more and more people in the industry. Over time, I began to hear of rosters that were accepting mediators. I applied for several rosters that seemed interesting to me, and slowly began to build my experience as a mediator.

I had also been doing training as part of my corporate practice and enjoyed it. I liked building presentations, and working with audiences. I am an impatient trainee, so I try to present the kind of training that I would enjoy if I were sitting in the audience. At one point, nonprofit agencies began asking me to help them train new mediators. After I did several modules in nonverbal communications and had gotten positive feedback from the audience, I started looking for more opportunities to train.

For me, having constant income while I was building my practice was important—financially and psychologically. My average client engagement is approximately two years long, and usually takes up all of my time during business hours. Consequently, I could only grow my mediation practice part-time and during gaps in my consulting schedule.

**What trade-offs were you faced with as part of your decision?**

**LB:** Does being terrified count? Actually, I’m kidding. The trade-off was obvious—I sacrificed security and financial freedom. But once I made the decision, it became an article of faith for me—I would do what was necessary, and everything would work out fine.

I didn’t know what that looked like, or how long it would take, but I was so sure about what I was doing that I honestly can’t recall any moments of real fear. I made a full-bore commitment, emotionally and psychologically, to move forward and make a career in this field, and I had complete peace of mind with my decision, even though I was engaging in the professional equivalent of jumping off a cliff.

Of course, I had to make financial arrangements to get through at least a couple of years without an income.

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and that meant paring back my lifestyle a bit. I didn’t miss anything. I was so fulfilled with building this new professional life for myself, I had neither the time nor the inclination to feel that I had given up much of anything.

**AY:** Building a business part-time is not ideal. Over the past 10 years I have had to put marketing and business development on hold because a corporate client hired me for a long-term project. As a result, while I have been able to earn a stable income over the past decade, the income came as a result of corporate projects rather than mediations.

   My dilemma is that, in the short run, I have been able to earn significantly more by working with corporate clients on technical projects than I could as a mediator. However, corporate clients expect a high level of service, and I am rarely able to do mediation work while on an engagement.

   Over time, the compromise of building my practice part-time has resulted in my overall ability to make a living, but not always from doing the work I love.

**How did you select your training?**

**LB:** The first one selected me. I was groping around in the dark, doing Internet searches and the like, but couldn’t figure out if I needed a 40-hour training or a masters in mediation! At one CLE program, someone mentioned the John Jay Dispute Resolution ListServ, as if it were the Holy Grail of information in the field.

   I signed up. As the email started rolling in, I felt like I had finally tapped into the community.

   When Woodbury Institute at Champlain College advertised a basic mediation training that was just a few weeks off, I saw my first opportunity to get my feet. So, with my husband and my pup in tow, we headed for Vermont. The next four days revealed to me that I had found my way right to the place I was meant to be. I loved it, or as I like to say, I drank the ADR Kool-Aid. I was hooked.

**AY:** I took my first training class while I was in grad school. The class was free, so I took it. Since then, I have taken other mediation training classes to expand my knowledge of the field. Some classes appeal to me because I have heard good things about the instructor.

   Other trainings help me understand a narrow specialty with which I am not familiar (e.g., victim-offender mediation). At other times I take a course to qualify for a new roster.

**What did you do after the training?**

**LB:** More training. And then some more training. And then . . . I really wanted to be good at this, and unlike Alex who jumped right in, I needed to build my confidence through more demonstrations, role plays, and the like. Part of me had been harboring a yen to go back to school for some time, so I felt great about it.

   I also knew that much more had to be revealed about the different ADR practices before I would know where I felt most comfortable and where my skills were strongest, be it mediation, arbitration, collaborative law, ombudsman, or some other newly emerging discipline.

   In one year, I completed more than 300 hours of stand-alone training programs. I also completed a certificate program at the Cornell Industrial & Labor Relations School, which has given me a real leg up in the field of labor arbitration.

   I recognized myself for what I was—brand new to this work—and the more perspectives, advice, guidance, and practice I could get from and with those who had distinguished themselves before me, the better off I knew I would be. For me, it was an investment in my future—and not a small one, both in terms of time and money. I can already see that investment paying dividends.

   I also joined a number of bar associations and began attending events regularly. People got to know me, and I started to become comfortable identifying myself as an ADR professional. The importance of networking and getting yourself known cannot be overstated.

**AY:** After I took my training and returned to New York City, I started mediating cases in Staten Island, Manhattan, and Brooklyn. I did as many cases as I could fit into my schedule to gain as much experience as possible. Although these cases didn’t pay, each one I did helped me to sharpen my skills and feel more confident. I also felt a great sense of accomplishment when I was able to help parties end the mediation in a better place than they were when we started.

**What are the critical skills of an arbitrator/mediator?**

**LB:** To quote one of my teachers, “patience and perseverance, patience and perseverance, patience and perseverance.”

**AY:** There is a healthy debate among mediators about the relevance of industry skills in the role of mediator.

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I also noticed that I had a certain amount of instinct for when to caucus, when to ask probing questions, when to be quiet and listen, and so forth.

—Alex Yaroslavsky
In my view a mediator needs to understand the language of the parties, including industry terms, standard legal practices, and so forth.

Of the mediators I’ve observed, the one skill I have found to be vital is helping the parties let go of the conflict, its injustice, hurt feelings, etc., gain clarity about their interest, opportunities, and risks, and move the conversation into the area of brainstorming possible solutions that will address their needs.

To do this, the mediator needs to make each party feel heard and understood without being judged.

This ability to capture the emotion of the conflict is the one skill I have seen effective mediators display. It is a subtle skill, but highly effective in moving the mediation forward.

**How did you start getting on rosters?**

**LB:** I waited until I had enough cases under my belt in the pro bono arena that I felt I had something meaningful I could say on the applications, and it paid off. There are many opportunities for practicing your skills on a pro bono basis that anyone starting out should take advantage of. The most important of these for me was the apprenticeship at the community dispute resolution center (for me, it was CMS in Queens), which gave me 13 weeks of progressively greater involvement and responsibility in live mediations, and built not only my skills but also my confidence. Similarly, the New York court program that provides arbitration and mediation services for the resolution of attorney-client fee disputes needs volunteer neutrals to handle a heavy case load. They will train you and offer you opportunities every month to take on cases.

Once I had some “seat time,” the applications were easier to approach. I was accepted onto many court rosters and began getting work right away. Since then, momentum seems to have taken over.

The important thing is to get started and build your resume. The best starting place for paying work is the court-annexed mediation programs.

**AY:** I am on several rosters: CCRB, FINRA, NYC-OATH, NYS Supreme Court, NJ Civil court, and the US Bankruptcy Court (Eastern District).

Some rosters are more difficult to join than others, but all require a basic training course and relevant experience.

Most of the opportunities to join rosters came to me through mediation experience, being in the industry for a period of time, continued training, and active networking.

**What advice do you have for a new mediator?**

**LB:** Those getting started in the field will want to develop relationships with established professionals in the field, and approach one or more of them about acting as their mentor. Of course, the best of these practitioners have very busy schedules, but they really do want to help. Set yourself apart. Be the person who is doing all the right things, putting in the footwork, doing the pro bono work, getting involved. That is the person they are most inclined to help, because they know you are serious and that their time with you will be well spent.

I have worked hard at developing relationships with the people I’ve come in contact with, either as teachers, serving on committees, chairing programs, or just sharing experience and information. Alex was one of my teachers in the mediation training I took at John Jay. A year later, he had me back to talk about how I was progressing in the field, and we continue to collaborate on various projects.

Also, don’t discourage easily. You will hear a lot of people talking about how hard this is, how long it takes, how many obstacles to entry there are. That may all be true, but it can be done. Hang in there.

**AY:** First, find a good training course. Ask to speak with recent graduates of any training you are considering and find out the students’ experience.

Next, immerse yourself in the field as much as you can. Take a good training course (or two). Get onto mediation distribution lists, join LinkedIn groups, read blogs, attend conferences. Meet as many colleagues as you can, and volunteer your services to the extent possible. Organizations are always looking for energetic volunteers and will appreciate your commitment to the field. Your name will become known, and you may be invited to present at a workshop or speak at an event and thus promote your practice.

At the same time, keep in mind that your colleagues are not likely to be your clients. So be sure to join organizations and networking groups where your clients (or potential clients) are likely to congregate.

—Lisa Brogan
You did not go to law school to study marketing. However, you know you should be doing something in the way of marketing and promoting yourself and your services to potential clients.

Yes, your time and resources are precious, and you may view anything above and beyond doing your legal and ADR work as a nuisance. Yet marketing, advertising, and public relations are vital to maintaining and growing your client base and are the necessary evils of doing business. Word-of-mouth referrals and simply trusting the relationships you have built with your current clients are not enough to sustain and increase your business portfolio.

My company works with attorneys and business professionals by helping them grow their practices. For more than a decade, I have specifically worked with mediators to launch and grow their practices. The key to developing a marketing program to help grow your practice is simply to get started.

The initial step of the classic 12-step program is admitting the existence of a problem. If you admit that you could do more to market your practice, then you have already started the journey to improving it. Following the steps outlined here will guide you on that journey and help you strengthen your relationships with current and potential clients and add value to your firm’s name and services.

**Step 1—Determine Your Niche**

Realize that you cannot be all things to all people. Do not be a generalist who believes you can fulfill everyone’s needs. The key to success is doing some soul searching and determining what you are good at doing, what you like doing, and what type of client you like doing it for. If it is not immediately evident to you, ask a colleague or trusted friend how they would rank your strengths and weaknesses.

Take a look at the list of your current client base and ask yourself some questions: Do they fall into any certain business category, size of organization, or some other grouping? Is there a common thread that connects your clients together? Use the expertise you already have in specific areas and build on the strengths you already possess.
Step 2—Identify Your Ideal Client

Pretend that you have a box of building toys that would allow you to construct the perfect client complete with every personality and emotional trait imaginable. Which items would you choose? What makes a perfect client in your opinion? Where can you find them? What media do they follow? To what associations and boards do they belong? In which geographical areas are they located?

Make a list of 20 ideal clients. Figure out what they care about, the affiliations to which they belong, and what they value in an ADR provider. Find out how you can specifically fill their needs without falling into the traps that weigh many businesses down—cliché and canned responses, lists of generic services, tired literature, and so forth. Determine the needs of your clients and demonstrate unique ways to fill those needs.

Step 3—Understand Basic Business Practices

As mentioned above, you did not go to law school to study marketing . . . or business. Do you know how to read a spreadsheet and understand the terms mentioned on it? Do you appreciate how to run an office effectively? What does it take to choose the ideal candidates for the support positions in your firm? Which tasks, if any, can be outsourced? Which tasks should be conducted solely in house?

Understanding basic business practices will both provide you with self-confidence and give your clients increased confidence in your abilities.

In addition to a specific marketing plan, you will benefit from having thorough strategic business and financial plans in writing. If you have these items in place already, review the plans for timeliness and relevancy. Do these documents still relay pertinent information and coincide with your mission statement and core beliefs?

If you do not have these documents in place, now is the time to assemble them. Either commit yourself to the creation of them or hire an experienced business coach to create them for you. Fully comprehend the business strategies and financial realities of your practice, so you know what portion of your time and earnings can be allotted toward marketing activities.

Step 4—Review Your Current Marketing Activities

“I love the way my name appears in the phone book and how my website pops up when I Google my business name!” Can you say that with confidence?

What are you doing now to promote yourself and your services? Do you use advertisements, printed literature, or a website? Do you routinely update these items and ensure they have consistent language and a similar look? What do you do to announce new products, business offerings, or staff to your current or potential clients?

Pretend that you are someone who is looking for a mediator in the area. Where would you begin your search—a referral, a professional organization listing, the Internet, or the phone book? Or is there another avenue?

If in doubt, go to the source by routinely providing your current clients with ways to garner their feedback of your services. Written surveys, email follow-up, and even a phone call at the completion of a project will allow you to answer any questions or concerns they may have regarding your firm. The feedback from them will also assist you in honing your marketing messages and specifying your niche.

Ask objective colleagues, friends, or (most importantly) clients to give you their initial thoughts and honest opinions regarding the look and messages they see when they look at your business collateral.

Step 5—Dream It!

You know the saying, “Where do you want to be in 5 or 10 years?” Well, have you ever taken the time to really determine the answer for yourself? Meditate on that thought and picture yourself a decade older. What is your job like? Are you working more hours, or fewer? What type of clients does your firm serve? What income are you making? Are you no longer working and living the retirement dream? Determine what your goals are in order to figure out how to reach them. The same is true for your marketing goals.

Once you know what you want to do and where you want to go, you need to determine the road map for how you will get there.

The key is to streamline and prioritize your marketing plan so it is unique and fits you and your organization. Using a template or another organization’s plan as a starting point is fine, but you still need to customize your plan to make it exclusively yours.

Although it would be wonderful to roll out a full-scale advertising and public relations plan—complete with paid advertising, glossy brochures, weekly newsletters, glitzy website, and billboard advertising—you must ask yourself if that is realistic. Would it even serve your purposes and be noticed by those target audiences you are attempting to reach?

Develop and define your organization’s marketing goals and what actions you are capable of making with the amount of time, personnel, and budget you currently have available.

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Step 6—Make a Plan
We are all dreamers at heart with lofty goals and wishes. Writing those dreams down is the first tangible step toward turning those dreams into a reality.

The process of putting a marketing plan in writing forces the person preparing the plan to look at the business in an objective and critical manner. The plan needs to define your organization’s purpose, your competition, your management, and your personnel. The process of constructing a business plan can be a strong reality check.

A good marketing plan will be your practice’s bible for all of your mass communication activities. It will guide you in your advertising purchases and public relations tactics and ensure that every member of your firm communicates the same messages both internally and externally.

Understanding basic business practices will both provide you with self-confidence and give your clients increased confidence in your abilities.

The plan should include action items that are measurable with set objectives and specified target audiences. Each action needs to be evaluated for its effectiveness and how it contributes to the overall brand of the firm.

Make your marketing plan a living, dynamic document that is regularly reviewed and updated monthly to reflect market-influencing trends to help you make the most of new opportunities.

Step 7—Determine Your Marketing Strategy
A is where you are now. C is where you want to be. The question now is to determine “B”—the specific step-by-step tasks that you need to do to reach your marketing goals.

In today’s fast-moving, highly technological business environment, keeping up with all of the media avenues that are available is a daunting task. Do you know if you need to have a presence on the web besides your website? What about using social media, such as Facebook, LinkedIn, Twitter, or even an iPhone app? What makes sense for you and where you want to be?

If you are uncertain where to begin, you could always start by analyzing your competitors’ marketing strategies to learn how they reach the market. If their strategy is working, consider adopting a similar plan. Determine if the media they use is a proper fit for your organization or if there is room for improvement. The most effective marketing strategies typically integrate multiple media or promotional strategies to reach the market.

Some specific areas of your marketing communications strategy could include direct mail, trade shows, public relations; editorial boards; public speaking; promotional collateral; and advertising in television, radio, print, and the web. Specify which marketing communications tactics are a good fit for your organization, your firm’s budget, and the message you are trying to communicate.

Step 8—Harvest Strategic Relationships
You already know many people. Whether your relationships are professional, personal, in their infancy, or time-tested, consider all of the names you know. Pull out your Rolodex, Outlook, and Blackberry and give them a thorough viewing—clients, colleagues, and even suppliers or vendors. Your organization already has developed relationships with scores of people.

After you list those individuals, determine whose business acumen you admire. Ask yourself who can assist you in your marketing endeavors and with whom you can develop a strategic relationship. Whether it is an email, phone call, lunch, or an invitation to a benefit, you need to make yourself known to them. At a minimum, communicate with those on the list once a month.

Use these strategic relationships as an extension of your business. They can act as a voice to current clients, as a reference to potential new clients, and as a mentor when you need to make critical business decisions. Identify and nurture your strategic relationships by routinely connecting with them.

Step 9—Do It Today!
Now that you proudly have your written marketing plan in hand, what do you do now? The answer is simple: put it into action!

Some marketing programs will require detailed action plans; others will not. Some tasks are no-brainers—start and completion dates may be sufficient. If, however, your marketing tactics are unfamiliar or complex, then an action plan could save your sanity.

Your action plan should include a description of the program, reference to the general marketing strategy it supports, a budget, the person accountable for the project’s completion, and a time line.

If you ever feel as if your plan isn’t meeting your marketing goals, simply change to a new path. As long as you are upholding the basic tenets of consistency in message and target audience, you can’t go wrong.

The absolute fastest way of destroying all of your good
planning and marketing momentum is to do nothing at all. Yes, you will need to devote some time to take your firm to the next level. If you don’t have the time or simply don’t want to devote your time to seeing your marketing plan through, then hire someone. Whether it is an internal position or a paid consultant, you will greatly benefit from having someone who is devoted to maintaining consistency in your messages and brand image. Determine who will take responsibility for each tactic, what the time line will be, who the target audience is, and how the effectiveness of your message will be measured.

Step 10—Get Out of the Office
It’s easy to get into the habit of sitting behind a desk, but will that grow your practice? Literally meet your potential new clients by attending community events, taking an active role in professional organizations, and looking for speaking opportunities that will put you in front of people.

Clients like to see that mediators and attorneys are active members of their communities and confidant speakers. Once you make the connection with a potential client, invest the time in really getting to know them and understanding their business and specific circumstances.

Put yourself in front of as many potential clients as possible and in a position of authority by being seen at professional events and speaking engagements.

Step 11—Consistently Communicate Your Message
You can’t be all things to all people, and your message can’t vary. What are the top three things potential clients should know about you and your firm’s services? How are these messages woven into all of your business literature, advertising, and talking points? What is your organization’s brand? What is your practice known for providing?

Branding is not about getting your target market to choose you over the competition, but rather about getting your prospects to see you as the only one that provides the right solution to their problem.

Develop no more than three key points that will identify your firm’s brand. Use these points as talking points when conversing with potential clients or during speaking engagements, in written literature about your practice, and even in your advertised messages. Determine what your top messages are, how you will communicate them, and how regularly you will disseminate them.

Step 12—Reroute When Necessary
If you find yourself going down the wrong path, simply turn around. Nothing about marketing or business development is set in stone. If a certain tactic doesn’t work for you, fails to reach your target audience, or is simply too expensive for your bottom line, then try something different.

Do one new activity a day—write a letter, send an email, conduct a client satisfaction survey, or make a phone call. Even just one small step will eventually lead you to new beginnings. Have fun with your marketing, let your creative side shine, and change course when necessary.

If you are uncertain as to how you will carry out the specific tasks or would rather not dedicate the time to them, then hire a knowledgeable professional who will guide you and focus your marketing activities.

Lastly, the Serenity Prayer used by another 12-step program, Alcoholics Anonymous, asks for the acceptance of things that cannot be changed, the courage to change the things that can be changed, and the wisdom to know the difference. The marketing of your firm and growth of your practice is something that can easily be changed, you have the wisdom to do it, and now it’s time to be courageous and make it happen.
There is a considerable gap between what novice mediators expect and what mediating for a living is like. Many are drawn to mediation because they expect the job will provide deep satisfaction that comes with helping others.

Making a living as a mediator, however, is anything but fun for many of those trying. Training courses are plentiful, but there are few mentoring and other job opportunities. Many of us interested in mediation are advised to pursue our interest on a part-time or volunteer basis at night and over weekends, while keeping our day jobs. Those making a go as independent mediators spend a substantial amount of their time engaging in “relentless marketing” because, as one experienced mediator put it, it is “harder sometimes to get cases than to settle cases.”

But then there are some mediators who are busy enough to gross a million dollars per year or more. In 2008, I conducted a study of the market for commercial mediation, hoping to explain the income gap between the few high-income mediators and the many mediators who made little or no money mediating. The data in this article is drawn from public sources—Bureau of Labor Statistics, American Bar Association, Association for Conflict Resolution, and court mediator rosters—and from surveys and interviews that I conducted with a dozen established mediators in private practice and managers of ADR organizations. I found that the private mediator market is similar to markets for entertainers or professional athletes, instead of the professional job markets from where many mediators are drawn.

The Market for Mediation Services and for Mediation Providers
The market for mediation has grown and matured significantly over the last 30 years. Data about the market for mediation services and for mediation providers suggests that supply exceeds demand. More mediators want to enter the market than there are mediation jobs.

Mediation Services
Although the market for mediation services has grown, it is still small compared to litigation. Mediation remains a choice that is more often the result of a judicial or
legislative mandate than of party choice. According to a study by the American Arbitration Association, 63 percent of respondents (i.e., companies) and 73 percent of surveyed Fortune 1,000 companies attributed their use of mediation to court-mandated mediation programs.4

The usual explanation is a lack of knowledge (on the part of the public) regarding mediation. Other explanations include the fact that lawyers, not their clients, decide whether a dispute will be mediated, and lawyers have a financial interest in retaining control over the dispute. Finally, it has been suggested that the mediation market remains small because using mediation, unless court-mandated, requires consent of both parties. Without consent, the default option, litigation, will be used.

Mediation Providers

Experienced practitioners estimate that more than 100,000 people have received some sort of mediation training.5 Of those trained, relatively few actually practice mediation, and even fewer make a living as full-time mediators.6 There are about 10,000 full-time providers of ADR services in the United States today.7 While the number may seem large, it is dwarfed by 1.14 million lawyers admitted to practice in the United States.8

The vast majority of people who enter the mediation market drop out within two years, according to one mediator I interviewed.9 Sometimes, mediating part-time is a choice: some attorneys offer dispute resolution services in addition to their legal services; some therapists mediate in addition to counseling families and couples. But, for the most part, mediators mediate part-time because they cannot support themselves solely with mediation.

Many mediators in private practice, particularly in states with mandatory mediation programs, rely on court references as their primary source of mediation work. In Florida, which probably has the largest and the most developed court-connected mediation program, there are currently almost 6,000 registered mediators (up from under 5,500 in 2008).10 But, according to a court administrator, probably 10 percent of registered mediators do 90 percent of the work.11

Of the few thousand mediators in private practice who are able to mediate full-time, the majority earn $50,000 or less.12 The neutrals I interviewed agreed that there are fewer than a thousand mediators, and possibly only a few hundred, who earn high incomes, grossing $200,000 or more per year. Only a couple dozen or so mediators, primarily former judges practicing with JAMS and a few high-end commercial mediators in markets where the cost of living and, as a result, mediation fees are high, are able to consistently bill more than $1 million per year.13

Why Do So Few Mediators Make Money?

Two factors explain the income structure: flagging demand for mediation services and a winner-take-all market for mediation providers.

A Function of Supply and Demand

The market for private mediation services works like any other market, and is a function of demand for and supply of mediation services. While there exist many willing mediators, private demand for mediation has been underwhelming. Most people remain leery of negotiation as a way of settling disputes. If they know about mediation, they are concerned that mediation is second-class justice: quick and cheap, but more likely to result in them being taken for a ride. The fact that a large percentage of disputes, perhaps as many as half, are mediated in free public programs further dampens demand for private mediation at the low-price end of the market.

Winner-Take-All

Human capital theory predicts that pay for work will depend on observable employee productivity, which will in turn depend on talent and effort. The theory predicts that someone who works 10 percent harder or is 10 percent more talented should receive 10 percent more pay. But winner-take-all markets do not operate in accordance with the human capital theory. In those markets, pay depends on relative performance, rather than absolute performance, and tends to be concentrated. A 10 percent increase in talent or effort can cause pay to differ by 10,000 percent or more. The (perceived) best performers are wealthy, whereas second-best receive only a tiny fraction of the best performer’s pay, even though

For the most part, mediators mediate part-time because they cannot support themselves solely with mediation.

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they might be only marginally less productive.

This reward structure has long been common in entertainment, sports, and the arts, but also seems to be present in the mediation profession. There are several causes. First, buyers of mediation services are repeat players (e.g., lawyers). They maintain closed lists of mediators that they call when needed. Unless a mediator is on the list, he or she will not be selected. Second, variations in quality of mediation are hard to observe, and clients must rely on the few sources of information available, often word of mouth. A mediator who was selected to mediate a large commercial dispute and performed well is much more likely to be selected to mediate again, even though he or she may be only marginally better (or perceived as such) than the second-best choice.

The demand for a top-notch service may also stem from the desire to avoid adverse outcomes from having bought the (perceived) second-best. When an attorney with a high-value case refers it to mediation, he or she is never going to be criticized for selecting a well-known mediator. Even if the mediation fails, buyers can comfort themselves by knowing that they purchased the best. But, if the mediation works well, there is no way of knowing if the second-best would have worked just as well.

**Why Do Some Mediators Make So Much Money?**

*Nonhomogeneity: Characteristics of the Highest-Paid Mediation Professionals*

Best-paid mediators do not compete directly against second-tier commercial mediators (who may still be making a very comfortable living), who, in turn, do not compete against the rest.

A good mediator is hard to describe and is usually referred to as “you’ll know it when you see it.” The reason is that, as one mediator put it, “mediation is much more complex than litigation.”\(^1\) It requires excellent mediation skills, complex analytical skills, and the ability to quickly process a substantial amount of information. It requires the ability to move cases relatively swiftly toward settlement. It also requires excellent interpersonal skills: the best mediators can “read” people and have the intuitive ability to sense the things that are not being said. They are compassionate and empathetic, and can focus all their intellectual energy on the dispute in front of them. They are “chameleon-like”: usually evaluative, but able to adjust their demeanor and mediation style to the party and the dispute. They are also calm and patient, and have both a sense of humor and a sense of drama. They can quietly signal to their clients that if the dispute can be settled, they are the ones who can settle it. They are also good businesspeople who market themselves well; not by using traditional marketing channels, but by always performing well in front of clients and their attorneys. Many, if not most, top mediators have formal or informal business plans and excellent case managers, who they pay well. And most importantly, the mediators who are frequently selected are the ones who have been able to stay in the field long enough to develop a reputation as great mediators.

Although mediation training is necessary to become an effective mediator, hands-on experience is the most important factor predicting high settlement rates (the rate of settlement is one of the few objective performance criteria in mediation). One successful mediator observed that “it usually takes about 30 mediations to even approach a point where you are ready to charge for your services.”\(^2\) While this may sound like little, many full-time mediators—which means they are more successful than 80 or more percent of all mediators—only mediate 100 or so cases per year.\(^3\) Because beginners are less busy, it might take a beginner mediator a full year or longer to get enough experience to start charging. Hence, without paid internship programs for beginner mediators, private mediation will remain a possibility as a second or third career, after the mediator has sufficient financial resources to survive a few years with little or no income.

**Organizational Structure of the Mediation Profession**

Mediation is a lonely profession: many mediators in private practice work alone and join forces only for practical reasons (e.g., sharing administrative staff). Even the largest mediation firm, JAMS, employs only a few associates, while its mediators are independent contractors.

Although the majority of full-time commercial mediators are lawyers, few practice in law firms because of conflicts of interest, both existing and potential, according to mediators I interviewed. Because mediation will generate limited fees, few law firms would trade mediation income for the client’s other legal work.

Mediation is a hands-on skill that cannot easily be delegated to junior associates. Unlike law firms, whose work requires the simultaneous efforts of an army of associates, mediation work is less time-consuming and cannot be broken into small pieces. Mediators cannot delegate substantive work, such as reading party
De Facto Barriers to Entry

Although there are few formal barriers to entry in the market for private mediation, there are high de facto barriers to entry. Commercial mediators get most of their cases from practicing attorneys and courts. Attorneys are the gatekeepers to mediation; parties rely on their attorneys to decide whether a dispute will be mediated and who will mediate it. Unless a mediator is on the attorneys’ short list, he or she will not be selected to mediate commercial disputes. It is very difficult to be added to the list. A mediator needs a stellar reputation in the legal community and a solid track record, which takes time. Many of today’s top mediators spent five or more years mediating before they finally broke even, let alone made good money. Furthermore, the fact that attorneys select mediators has been suggested as one of the reasons why the profession is not more diverse: most financially successful mediators are white males with legal training in their fifties or older.17

In addition to selection bias in favor of established mediators, the market for mediation providers has become more specialized and segmented as it matured. Some of the most respected public policy mediators have essentially no high-end commercial cases, even though they have a proven track record in work that is at least as complex. There are increasingly fewer opportunities for mediation generalists. Aspirant mediators must thus have experience in a particular subject matter—family disputes, environmental work, business—in order to be able to succeed in the market for private mediation services.

Elasticity of Demand

Compared to litigation, mediation is cheap. One commentator estimates that it costs each party at least $100,000 to litigate a straightforward business claim.18 Mediation of a similar dispute, on the other hand, usually costs a fraction of that amount, and the parties ordinarily share mediator fees. Even high-end mediators usually do not charge much more than $10,000 per day, and a straightforward business claim usually takes a day or two to settle in mediation. Mediator fees in high-value commercial disputes may be inconsequential to the value of settling the matter, and hence clients will pay for the mediator they want, not one they can afford.

In domestic cases, mediator fees are usually lower overall, and mediators tend to charge by the hour because clients are more price-sensitive. Divorce mediation fees are also more commonly regulated, either directly by legislation or court rules, or indirectly by lower filing and legal fees for domestic disputes. As a result, demand is more elastic than in commercial mediation, and hence, family mediators can compete by charging a lower price.

Much of paid mediation is billed to clients on an hourly basis.19 Hourly fees vary by geography and by quality or reputation of the mediator. In smaller markets mediation services are available at $50 per hour at the low end. Larger mediation markets support higher fees, often in excess of $500 per hour at the high end.

Only a minority of high-end commercial mediators in competitive markets can charge flat per-diem fees or per-case fees. Because it is difficult to measure mediator quality by objective measures other than settlement rates, media-

Despite the knee-jerk inclination to provide general mediation services, novice mediators may be able to create a market for themselves by focusing on a narrow niche.
We wouldn’t mediate if we didn’t think we could produce results that satisfy the parties, cost less, take less time, and enhance working relationships. But how exactly do we think mediation “works”?

It is not magic. There is a logic to it that goes like this: (1) disputants know what they want (their “interests”), and they have a fallback plan (best alternative to negotiated agreement, or “BATNA”); (2) even if they make demands far in excess of their BATNA, they are eager to see what can be worked out, without extending a strike, litigating, waiting for a judge, or escalating a political battle; (3) after some huffing and puffing, they often discover whether there is a zone of possible agreement, somewhere between their BATNAs or their reservation values, and if there is, they believe they’ll be able to craft a binding agreement; (4) the mediator can help the parties clarify their interests, explore mutually beneficial trades, and generate a written agreement.

Reconciliation vs. Resolution
The Logic of Mediating Values- and Identity-Based Disputes

By Lawrence Susskind

This logic assumes that: (1) the parties know their interests; (2) when interests are in conflict, ingenious ways can be found to reframe, bundle, fractionate, or otherwise trade bits and pieces of what the parties want in order to produce workable agreements that help all sides exceed their BATNAs; and (3) that the parties and/or their lawyers will be logical, if not reasonable—that is, they won’t turn down agreements that are better for them than no agreement.

Does the same logic apply when we are talking about disputes that involve not just interests but also deeply held values or beliefs, and when not just interests but also identities are at stake? For the past several years, with colleagues and students at the Program on Negotiation at Harvard Law School, I have been trying to answer this question.

Three examples illustrate the kind of real-life values- and identity-based disputes we have been studying. One dispute centered around the way the issue of...
homosexuality was introduced in a public elementary school curriculum; a second, the diversity campaign in a corporate workplace that pressed employees to be respectful of homosexual coworkers; and third, a dispute over a gay rights celebration in a public park and a city's efforts to ensure freedom of expression to those who wanted to protest the celebration. These cases help us distinguish between the usual logic of mediation and a somewhat different logic that I think might be more relevant when values and identity, rather than interests, are at the heart of public and private disputes.

The three disputes were not mediated. The participants, and especially the lawyers and the judges, did not think mediation could help. In hindsight, I disagree.

The first dispute, between a public school system and two parents of an enrolled child, concerned a classroom discussion about homosexuality and the distribution of reading materials depicting same-sex couples. It also raised questions about the role of attorneys representing clients in negotiations involving deeply held values and beliefs. The family wanted the school principal to notify them ahead of time whenever homosexuality, same-sex marriage, or families headed by same-sex couples might be discussed in class because they wanted their children excused from those sessions. The school principal denied this request. The family filed a lawsuit against the school district in state court asserting their parental rights to have their children excused when parts of the curriculum conflicted with their religious beliefs. The judge in the state trial court ruled in favor of the school district, holding that parents do not have a right to restrict what a public school may teach their children.

The second dispute focused on a disagreement between an employee and a large, privately held software company (which we call MacroB). The employee was a senior project manager headquartered in California. A dispute arose when the company launched a diversity campaign featuring a series of posters, including one that read "I'm gay and I work at MacroB." The posters were placed in highly visible workplace locations, including on the exterior wall of the employee's cubicle. This devoutly religious person's faith holds that homosexuality is sinful. And so, in response, the employee posted Bible verses on his cubicle, including ones condemning homosexuality and foretelling dire outcomes for anyone engaging in homosexual acts. When asked by management to remove the Bible verses, the employee refused. The issue moved up the ranks. Senior staff gave the employee a week off, with pay, to reconsider. Meanwhile, MacroB removed the Bible verses. Upon returning, the employee reposted all the Bible passages and refused to remove them.

In the third dispute, two private organizations and a city got into a dispute over the speech rights that would or would not be guaranteed in conjunction with a permit for a festival on city property. A local advocacy organization that supports the city's sizeable lesbian, gay, bisexual, and transgender (LGBT) community had organized a daylong, family-oriented event called the "Outfest" to celebrate National Coming Out Day and to affirm LGBT identity. In addition to drawing large supportive crowds, the event attracted members of the public who opposed the message of the festival and LGBT lifestyles. One group, Salvation Now!, is a nationwide network of grassroots religious and social campaigners seeking

The participants, and especially the lawyers and the judges, did not think mediation could help. In hindsight, I disagree.

Why weren't these cases sent to mediation? Probably because almost everyone involved presumed no mediated resolution was possible. The fights were about fundamental value questions, and presumably neither side would be willing to soften its demands. Feelings of anger, aggression, and hurt abounded. Each side assumed they were in the right and that the others had acted
inappropriately. Symbolic issues took on great importance. The parties in each case felt there was a great deal at stake. Indeed, in several of these disputes, national organizations quickly appeared to offer free legal services, including representation “all the way to the Supreme Court.”

To the lawyers and judges involved, and presumably to the parties as well, there did not appear to be any way to resolve these disputes except to let the courts decide which principle would reign supreme. Do parents have the right to tell the public school what it can or cannot teach their children? Does a private company have the right to impose a diversity code that forces its employees to refrain from expressing deeply held religious views that might be hurtful to others, yes or no? Does a city have the authority to impose restrictions on free speech, including what some consider hate speech, in public spaces? Several of the partisans in these battles didn’t just want to settle these specific cases: they wanted to set highly visible national precedents.

I believe mediation could have helped in these cases, although I assume that the normal logic of dispute resolution would probably need to be set aside. Instead, the mediators might have tried to:

Facilitate dialogue and offer opportunities for deeper mutual understanding and relationship building. Instead of aiming to resolve these disputes, the mediators might have tried to help the parties understand and respect the views of their opponents and, most of all, helped them avoid demonization of the other side.

Appeal to overarching values. The mediators might have helped the parties reframe their disputes by appealing to values that they shared. By referencing universal values—for example, equal rights, freedom, or nonviolence—a mediator can sometimes help parties find common ground. Recognizing common values can also open lines of communication, build trust, and otherwise improve relations. They also can be a springboard to inventing ways of living and working together in spite of serious differences. So, this is an approach to dealing with differences that attempts to work around value differences.

Confront value differences directly. The mediators might have helped the parties confront their differences in a controlled fashion and enabled them to question each other’s values with the goal of possibly altering beliefs. This approach sometimes results in at least one party making a change in their own values or self-perceptions. There have been many occasions when groups with diametrically opposed values and identities have, through the therapeutic effects of truth-telling, cast aside generations of hatred or mistrust and started the long, slow process of reconciliation. One need only look at some of the divided countries and cultures of South Africa and Northern Ireland to see that reconciliation is possible.

Mediators aren’t therapists, but it does take a kind of therapeutic engagement to help parties confront diametrically opposed and deeply held values and beliefs. People may think they know what they believe, but there is more room to maneuver than most people imagine when it comes time to figure out how they will accommodate people with beliefs different from their own. It may be correct to assume that people engaged in values- or identity-based disputes won’t agree to compromise, but reconciliation (not resolution) may still be possible. For example, in the MacroB case, it might have been sufficient to put a different poster on the wall of the cubicle of the concerned employee and offer an after-work opportunity for employees on “both sides” of the debate to participate in a professionally facilitated discussion. Or, in the first case, the parents might have been satisfied if they had been given an opportunity to select books (from a longer list supplied by the school) to be included in their child’s “diversity book bag” and been given an opportunity to meet with other parents to share their concerns in a professionally facilitated dialogue. I think that the dispute resolution community has given far too little thought to the logic of reconciliation—what it takes to appreciate opposing views and reach agreement on how to coexist.

As the result of our research thus far, we have concluded that mediation can be helpful when parties are involved in values-based or identity-based disputes, but the usual problem-solving logic of mediation probably doesn’t apply. Also, to help in these situations, mediators may need to learn new ways of working to be able to help.

In addition, judges may need to be educated about the logic of reconciliation. We’ve got to convince the
Collaborative Divorce Handbook: Helping Families Without Going to Court

By Forrest S. Mosten
Jossey-Bass, November 2009
280 pages • Paperback • $70.00

Forrest (“Woody”) Mosten’s book, Collaborative Divorce Handbook: Helping Families Without Going to Court, is a treasure trove of good advice for a wide audience—seasoned practitioners, novitiates hail ing from a variety of professional disciplines, curious consumers, or anxious divorcing partners. The book will assist lawyers who seek a more client-centered, less adversarial practice; mental health practitioners who wish to add interdisciplinary skills to their repertoire; accountants and financial planners who want to help both parties going through divorce to coordinate their finances; and other professionals (such as clergy, educa tors, judges) who try to guide divorcing couples to less destructive methods for parting ways than litigation provides.

The book is composed of nine chapters, ranging from the theoretical (“A Paradigm Change from an Adversarial to a Collaborative Perspective”) to the eminently practical (“Toolbox of Strategies for Collaborative Agreement”) to the philosophical (“Walking the Collaborative Walk: Taking Twenty-Five Steps Toward Peacemaking”) to the entrepreneurial (“Building a Profitable Collaborative Practice”).

Although the focus of the book is divorce, Mosten also makes the important point that collaboratively based practice is being widely used by professionals in other arenas, such as premarital and postmarital agreements and nonfamily civil matters. According to Mosten, the collaborative approach is well-suited “for businesses of all sizes and sectors in the marketplace”—including disputes pertaining to professional practice breakups, real estate disputes, employment problems, professional liability matters, and any other issue where contractual or commercial disputes are at stake.

Mosten’s writing style is concrete and direct. He uses lay language in an effort to engage audiences ranging from clients to lawyers and mental health professionals. By including tables, charts, and templates throughout the book, Mosten make this an eminently practical handbook. For example, the five-page template entitled “A Guide for Discussion with Clients on Collaborative Practice” provides a step-by-step road map for educating clients about the unique aspects of collaborative law—including its advantages and disadvantages. On the critical issue of withdrawal/disqualification of counsel if either party decides to litigate the divorce, Mosten explains both the potential cost and the benefit of that aspect of collaborative practice—namely, that it “can increase the motivation of all parties and attorneys to reach a settlement. . . . As a result, everyone in the collaborative process focuses exclusively on reaching agreement.” His bottom-line advice to clients is as candid as it is vital: “You should be cautious about using a collaborative process if you do not trust that your spouse will negotiate honestly and sincerely.”

In one of the more engaging portions of the book
Collaborative practice has begun to fill a wide bookshelf of resources—Pauline Tesler’s guide published by the ABA being the first of that group. Woody Mosten’s book takes its place, in good company, among the very best.

Reconciliation vs. Resolution

(continued from page 26)

courts that something short of settlement might be the best outcome in a values-based or identity-based dispute. It would help, too, if the research community documented the relative effectiveness of various approaches to encouraging reconciliation.

Finally, what if Congress passed legislation creating a new intergovernmental office empowered to take the lead whenever the executive branch, Congress, or groups engaged in values-based disputes sought assistance in mounting reconciliation efforts of one kind or another? Congress enacted the National Labor Relations Act to spell out the ground rules governing collective bargaining and amended the Administrative Procedure Act to allow for negotiated rule-making. They could pass a new American Reconciliation Act to clarify the role of the dispute resolution community in reconciling some of the bitterly contested public policy disputes (like immigration, implementation of health care reform, same-sex marriage, abortion, and climate change) that our political process seems unable to handle.

Endnote

1. The cases described here are discussed in more detail in Jennifer Gerarda Brown’s article Peacemaking in the Culture Wars Between Gay Rights and Religious Liberty, 95 Iowa L. Rev. 742 (2010). They have also been transformed into teaching simulations available from the Clearinghouse at the Program on Negotiation at Harvard Law School (www.pon.harvard.edu/clearinghouse). See Teaching About the Mediation of Values-Based and Identity-Based Disputes (www.pon.harvard.edu/clearinghouse) for a more extensive discussion of how each of the three cases mentioned in this article might have been mediated.

Mark Your Calendars for 9th Annual Advanced Mediation & Advocacy Skills Institute in San Diego, October 2011

This interactive two-day training is for advocates and mediators looking to take their careers to the next level. The curriculum covers each phase of the mediation process and includes small-group discussions in which participants can discuss specific issues and fine-tune skills.
Advice for Aspiring Mediators

Although this article paints a somewhat bleak picture for those hoping to join the mediation profession, there is room for dedicated mediators to make a name for themselves, and a living, practicing what they love. Despite the knee-jerk inclination to provide general mediation services, novice mediators may be able to create a market for themselves by focusing on a narrow niche. Specialize in a particular field that you already know well, such as environmental law or construction, and gain a solid reputation among lawyers and/or business people in that field before starting a mediation career. Novice mediators should learn as much as they can about the market they are about to enter. Keep in mind that mediation is particularly well suited for situations where maintaining a healthy relationship is important, but conflict is common. For example, one novice mediator started a successful practice by providing prewedding mediation for couples, their families and in-laws, and the wedding consultant. Finally and most importantly, choose mediation because you love the work, not because you hate the job you currently have. ♦

Endnotes

1. Some successful mediators (for example Robert A. Creo, Jeffrey Krivis, and Eric Green) have reported hiring and mentoring junior mediators in their offices, but the practice is not common. See, e.g., Telephone Interview with Robert A. Creo, Mediator, in Pittsburgh, PA (Mar. 21, 2008); Jeffrey Krivis & Naomi Lucks, How to Make Money as a Mediator (and Create Value for Everyone): 30 Top Mediators Share Secrets to Building a Successful Practice 112–14 (2006).

2. Peter Lovenheim, Becoming a Mediator (2002).


5. Currently only Florida, New Hampshire, North Carolina, South Carolina, and Virginia certify mediators, so much of the information is estimated. Robert A. Creo, David Hoffman, and John Bickerman suggested the figure 100,000 trained mediators, extrapolating from the number of available mediation courses.


11. See Lovenheim, supra note 2, at 134–35.

12. See OCCUPATIONAL OUTLOOK HANDBOOK, supra note 7, available at www.bls.gov/oes/current/oes231022.htm (estimating the median salary for employed mediators at $52,770; note that the salary information includes a substantial number salaried government jobs that pay more than the median, suggesting that median private jobs must pay less than the overall median).


14. Id.


16. Email from Steve Cerveris, Mediator (Apr. 1, 2008, 12:34:02 EST). There is a group of full-time environmental mediators who might mediate only half a dozen cases per year, each of which might last several years. Interview with David A. Hoffman, Mediator in Boston, MA (May 1, 2008).


U.S. Supreme Court Considers FAA, State Unconscionability Statutes, and Class Action Waivers

**AT&T Mobility LLC v. Concepcion**
(2010 WL 3210456 (U.S.))

United States Supreme Court

The Supreme Court heard oral arguments on November 9, 2010, on whether the Federal Arbitration Act (FAA) preempts state unconscionability law. Plaintiffs brought a class action alleging that AT&T acted fraudulently when it offered a “free” phone to new subscribers, but then charged them the sales tax for the retail value of the phone. The arbitral clause in the service agreement between the parties specifically precluded class arbitration. The 9th Circuit held that the class action waiver was unconscionable under California law and that the FAA did not preempt California unconscionability law.

Arguing on behalf of AT&T, Andrew Pincus opened by asserting that section 2 of the FAA “provides that an arbitration agreement may be held unenforceable under State law only if the State law rule being invoked to invalidate the agreement qualifies as a ground that exists in law or equity for the revocation of any contract.” Mr. Pincus asserted that arbitration agreements should not be held to the same standards as those involved in litigation, and should be considered enforceable as provided in the FAA. The court appeared hesitant to meddle in the affairs of states’ rights when Justice Scalia asked, “Are we going to tell the State of California what it has to consider unconscionable?”

Deepak Gupta, arguing on behalf of Concepcion, asserted that unconscionability is determined by looking to the public effects of enforcing the class action waiver in arbitration. He referred to the broader implications of AT&T’s arbitral agreement by warning that “if you preclude class-wide relief, that will gut the state’s substantive consumer protection laws because people will, in the context of small frauds, not be able to bring those cases.”

The decision should provide insight to the direction of consumer rights in unilateral arbitration agreements, and the application of the FAA to conflicting state statutes.

**Class Action Is a Question of Arbitrability, and for the Arbitrator**

**Arcidiacono v. Limo, Inc.**
(2010 WL 4511083 (M.D. Fla.))

United States District Court, M.D. Florida

Plaintiffs filed a class action against defendants The Limo and Veolia Transportation. The defendants filed a motion to dismiss, since the arbitral clause clearly prohibited class arbitration, and moved to compel individual arbitration. The court granted the motion to compel arbitration, but held that the question of whether the clause permitted class arbitration would be a question for the arbitrator. The court reviewed cases, including Stolt-Nielsen, but found that since the parties explicitly included the American Arbitration Association’s Commercial Rules and Procedures, it had intended for Rule 3 of the Supplementary Rules to apply. Rule 3 states that the arbitrator shall have the authority to decide threshold issues, such as whether the arbitration clause permits the parties to precede on behalf of or against a class.

**Manifest Disregard Used as a Last Resort to Vacate Award**

**Goldman Sachs Execution & Clearing, L.P. v. The Official Unsecured Creditors’ Committee of Bayou Group, LLC**
(2010 WL 4877847 (S.D.N.Y.))

United States District Court, S.D. New York

Petitioner Goldman Sachs sought to vacate an arbitral award claiming the panel had manifestly disregarded the law. The arbitral panel had entered an award, in the amount of $20,580,514.52, in favor of the respondents finding that Goldman Sachs had failed to diligently investigate funds and was jointly and severally liable for the fraudulent transfers of Bayou Funds. The court considered the following three factors to determine whether the arbitrators had manifestly disregarded the law: 1) whether the alleged law was clearly ignored, 2) whether the law was improperly applied, and 3) whether the arbitrators knew of the law and chose to disregard it. The court found that the arbitrators had applied the law correctly, and reflected on Goldman Sachs’ position by stating they had “voluntarily chosen to avail itself of this wondrous alternative to the rule of reason, [and now] must suffer the consequences.”

**Clear Mind Necessary to Mediation**

**Adsit v. Wal-Mart Stores, Inc.**
(2010 WL 4903617 (N.Y.A.D. 3 Dept.))

Supreme Court, Appellate Division, Third Department, New York

Plaintiff brought a claim for personal injury after she was struck in the spine by a metal rod a Wal-Mart employee left in a shopping cart. The parties pursued mediation, where they reached a settlement agreement. After the mediation, plaintiff informed her counsel that she no longer wished to accept the settlement, claiming she was not of clear mind during the discussions. In order to prevail, plaintiff needed to prove that her “mind was so affected as to render her wholly and absolutely incompetent to comprehend and understand the nature of the transaction.” The court affirmed the settlement agreement, and found that the plaintiff was of clear mind after it heard testimony from the mediator and plaintiff’s counsel, who stated that they believed she understood the nature and consequences of the agreement since she had actively engaged in the discussions.

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Temple Grandin and Robert Mnookin to Present Plenaries at Spring Conference

The Thursday morning opening plenary and Frank Sander Lecture will feature Harvard Professor Robert Mnookin speaking on “Bargaining with the Devil.” On Friday morning, Temple Grandin, professor at Colorado State University and subject of the recent HBO film Temple Grandin, will speak to us regarding her dual perspective as a scientist and an autistic person. She will describe autism from the inside, opening us to a different way of thinking of the world and our interactions with the people around us.

On Thursday afternoon we will be treated to two focused plenaries—one on the arbitration of sports disputes and another on improving your practice through mediation postmortems.

Section Diversity Plan

When the Council of the Section of Dispute Resolution met in Fort Lauderdale in November 2010, it adopted a diversity plan for the Section and all of our committee activities. The Section has had a diversity policy in place since the early 2000s. The new diversity plan seeks to build on that policy by detailing specific actions the Section will take over the next few years to enhance diversity in our membership and the profession as a whole. These activities include:

- Developing a series of webcasts on practice development for women, minorities, persons with disabilities, and persons with differing sexual orientations.
- Coordinating efforts on diversity with state and local bar associations, including providing a tool kit to start a diversity initiative.
- Working with ADR providers and other organizations to strengthen and communicate diversity efforts.
- Convening a series of meetings or using surveys to gather (i) information about how users make mediator and arbitrator choices and (ii) suggestions about initiatives that should be undertaken to improve diversity.
- Ensuring that the Council and the Section leadership understand the diversity “call to action” and integrate diversity as part of all activities it undertakes including publications, membership drives, and conferences.

Nominations Committee

Section Chair Wayne Thorpe has appointed the Nominating Committee to receive nominations for Council seats and Officer positions for the 2011–12 bar year. Nominations are due April 20, 2011. The positions that will be available include four at-large Council seats, the Section Budget Officer position, and the Delegate to the ABA House of Delegates. Section Chair-Elect Deborah Masucci will chair the Nominating Committee.

Upcoming Teleconferences From the Section

Earn up to 1.5 CLE credits from the comfort of your home or office. The Section offers a CLE teleconference the second Tuesday of each month. Teleconferences are practical, informative, and on the cutting edge of developing issues. Next year’s teleconference topics include communications skills, negotiating techniques, and more. As a Section member you receive a significant registration discount. Go to www.abanet.org/dispute to view the upcoming teleconference schedule.

Books From the Section of Dispute Resolution

The titles in the Section’s publishing catalog provide the best professional guidance and practice tips from experienced practitioners. As a Section member, you receive a 20 percent discount on all Section publications. Recent publications include: Mediation Legal Disputes by Dwight Golann, which combines theory with practical techniques that the reader can use to resolve difficult legal disputes; Making Money Talk by J. Anderson Little, which provides the reader with proven models and techniques to deal with the problems of traditional bargaining; and Challenging Conflict: Mediation Through Understanding by Gary Friedman and Jack Himmelstein, which shows how parties can escape the trap of conflict through mediation rather than remain ensnared within its grasp at enormous cost to themselves and others. Also, our recent bestseller, The Organizational Ombudsman by Charles Howard, is an essential resource for ombudsmen, dispute resolution professionals, in-house counsel, corporate executives, university administrators, compliance officers, and human resources personnel. All Section publications can be purchased at www.abanet.org/abastore.

Looking for a New Year’s Resolution?

Join a Committee and get involved in professional activities that really matter to the ADR community. Committees provide unique opportunities to build your professional network, grow your reputation, and develop lasting relationships with colleagues and some of the premier experts of the field. In recent years Section Committees have drafted and adopted some of the fundamental “scriptures” of the ADR community. Contact the chair of your committee of interest and join your colleagues shaping the dispute resolution field. ♦
The Lighter Side

Winter 2011 Captioning Contest
By John Barkai

Because most agree that creativity and humor are effective in resolving disputes, we test our readers’ mettle with an occasional cartoon caption contest.
Submit as many captions for the above illustration as you wish. Please submit captions promptly to meet our strict publication deadlines. All entries are judged by Professor John Barkai of the University of Hawaii School of Law, and the winners will be published in the next edition of Dispute Resolution Magazine.

Mail, fax, or email your entries to:

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University of Hawaii School of Law
2515 Dole Street
Honolulu, HI 96822
Fax: 808-956-5569
Email: barkai@hawaii.edu

Fall 2010 Winners

“I didn’t really mean it when I said any clown should be able to settle the dispute.”
—Curtis J. Crowther

“Wow: the mediator really did put himself in our shoes.”
—A. Alan Cade

“I know the mediator said that it would be informal, but that was too much.”
—A. Alan Cade

“How did he negotiate his way out of this fiasco?”
—Art Hinshaw

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Mediating the Non-Litigated Dispute with Doug Noll and Lee Jay Berman

Mediating Mortgage Foreclosures with Mel Rubin

Nov 11  Introduction to a Career in Mediation with Lee Jay Berman

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Jan 25–29  Mediating and Negotiating Commercial Cases with Lee Jay Berman

Jan 25–29  Mediating Divorce Agreements with Jim Melamed

Feb 4–5  Building a Profitable Family Mediation / Collaborative Practice with Forrest “Woody” Mosten

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- Improved access to your data - secure and redundant storage
- Email templates & correspondence log
- Document upload
- Case tracking & reports
- Includes ongoing support

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