

MEDIATION AND OTHER METHODS TO FOSTER DEMOCRATIC DIALOGUE

Central European University, Budapest 2011

Benjamin Cardozo School of Law and Hamline University School of Law

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COURSE TEXTS:

GETTING TO YES, Fisher, Ury and Patton (**Text 1**) [will be provided in Budapest for CEU/SUN students]

THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, Stulberg and Love (**Text 2**) for US students and [**Document # 1**] for CEU students.

SUPPLEMENTAL ASSIGNMENTS: Assignments are organized by class day and referred to as **Document #**, as well as by title.

Breaks will be scheduled during each class period.

COMPLETION REQUIREMENTS AND GRADES:

For all students, class attendance is mandatory.

For CEU students who are not taking the course for a grade, completion of the program requires completing the written journal assignments described below.

For American students taking the course for a grade, evaluation will be based on the following:

10% Class attendance and participation.

90% Written assignments: Journal entries (40%); final paper based in part on the concluding mediation simulations (50%).

Keeping a Journal: Students are asked to maintain a journal that will include eight entries. Each entry should be the equivalent of approximately one typed double-spaced page (250 words). The journal may be handwritten (but, in that case, must be legible!). The topic for entry 1 and entry 6 are prescribed. Students may choose their own topics for other entries with the goal of tying reading, class material and aspects of students' own experience together. Suggested topics for entries 2, 3, 4, 5, 7 and 8 are provided only as an assist; please ignore the suggested topic if you would prefer to write about something else. Journals are due in the last class from all students.

June 6, 2011, Monday

Reading (to be completed, if possible, before course begins):

GETTING TO YES, Fisher, Ury and Patton

Chapters 1-3, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, Stulberg and Love, Text 2 [**Document #1**]

Readings on Mediation Concepts and Models [**Document #2**]

Post-class Assignment:**Journal entry 1 – Required Topic: cross-cultural interviews**

Working in groups of 4 or more, with students from as many different countries or locales (e.g., rural and urban) as possible, students will discuss and determine the most important similarities and differences between the national negotiating styles and other ways of resolving conflicts of the countries and cultures represented in the group. Students might explore whether other cultures are different in terms of: tendencies towards avoidance, competition and collaboration; formality and informality; punctuality, eye contact, and spatial distances between people in conversations and meetings; the role of gender, religion and age; preferences for problem-solving versus third party decisions. Write a journal entry reflecting on lessons learned from this conversation.

9:00-12:15	<p>Introduction and Course Overview Principles of Dispute Settlement</p> <p>Lecture and general discussion examining assumptions about dispute settlement, analyzing various dispute settlement methodologies, and exploring the role of mediation within that context.</p> <p>The Voluntary Resolution of Disputes</p> <p>Group exercise designed to illuminate the principles and dynamics underlying negotiation. The nature of the outcome, the importance of structuring the process, the role of information, preferences and priorities, the rationale of establishing trade-offs, and the facilitators and inhibitors of consensus-building will be stressed in the analysis.</p>
12:15-1:30	LUNCH
1:30-2:10	<p>Mediation and the Rule of Law in Central and Eastern Europe <i>Professor Csilla Kollonay</i></p>
2:15-2:45	SUN Orientation (in the classroom)
3:00-3:30	Library Tour (in the Library, in two groups)

June 7, 2011, Tuesday
Reading (to be completed, if possible, before class):

Chapters 4-6, Text 2 [**Document #1**]

Applying Collaborative Processes in Former Communist Countries, Goncz and Shonholtz, IAP2 (First Quarter 2000) [**Document #3**]

A Future Where Punishment Is Marginalized: Realistic or Utopian?, Braithwaite, 46 UCLA L. REV. 1727 (1999) [**Document #4**]

Post-class Assignment:**Journal entry 2 – topic of your choice**

Suggested topic: Would a mediation process “work” in a particular context (e.g., domestic cases) in your home environment? What adjustments to the process might make it more likely to succeed in the designated environment?

- 9:00-11:30 **The Mediator at Work**
 A demonstration of how a mediator works to resolve a dispute.
Overview of Mediation
 An examination of the various functions the mediator fulfills and the types of traits/interpersonal skills required of the persons discharging these functions.
Beginning the Mediation Conference
 An examination of the impact of different seating arrangements. Participants will examine the components of an opening statement. Interpersonal skills with regard to eye contact, language use, and creating a structured but comfortable environment will be the focus of the analysis that follows.
- 11:30-1:00 LUNCH
- 1:00-2:30 **Mediation's Place in Restorative Justice Regimes**
Professor Petra Bard
 Through lecture and discussion, participants will explore the unique theoretical and practical challenges posed by designing and implementing mediation in criminal cases. Special emphasis will be given to adaptation and use in Eastern/Central Europe, including in Hungary where recent amendments to the Criminal Procedural Code authorize use of mediation effective January 2007.

June 8, 2011, Wednesday

Reading: Chapter 7-8, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, Stulberg and Love (Text 2) [Document # 1]

Post-class Assignment:

Journal entry 3 – topic of your choice

Suggested topic: Have you changed the way you communicate or negotiate as a result of the material you have studied so far? Provide an example and the results of the change in behavior.

- 9:00-12:30 **Accumulating Information and Listening Constructively**
 Demonstration and analysis focusing on fact-gathering techniques, note-taking skills, and questioning skills. Interactive exercises will illuminate the task of translating hostile and adversarial communication into building blocks of collaborative dialogue.
Framing Interests and Issues to Construct the Agenda
 Lecture and discussion examining the mediator's role in, and responsibility for, identifying, framing and ordering the issues in dispute. Exercises will follow.
- 12:30-1:10 **Other Approaches to Mediation/Transformative Mediation**
Professor Christian Hartwig
- 1:20-2:10 LUNCH
- 3:15 TOUR OF PARLIAMENT

June 9, 2011, Thursday

Reading: Chapter 9, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, Stulberg and Love (Text 2) [Document # 1]

Readings on Diversity [Document #5]

The Restorative Approach in Practice: Models in Europe and in Hungary, Dr. Borbála Fellegi [Document #6]

Post-class Assignment:

Journal entry 4 – topic of your choice

Suggested topic: How does diversity play a role in conflict or conflict resolution in your home environment? For example, are the neutral mediators or adjudicators a certain gender or age? How successful are ethnic minorities in using public processes? **Or** Suggested topic 2: When you find yourself at an impasse or “stuck” for some reason, what works for you in terms of generating movement?

9:00-11:30

Mediator Strategies for Generating Settlement

Lecture, discussion, and exercises examining the rationale of various settlement strategies that a mediator can use to move the parties towards agreement. Analysis will highlight persuasive techniques for moving parties from impasse to settlement.

Dealing Effectively with Diversity

Discussion, analysis and exercises focusing on interpersonal and communication skills critical to facilitating dialogue in contexts in which issues of personal, cultural, gender and ethnic diversity are pervasive.

11:50-1:10

Bringing Mediation into the Justice System: attitudes of judges and prosecutors towards victim-offender mediation in Hungary.

Professor Borbala Fellegi

This presentation will introduce the concept of mediation in the criminal arena and explore the incorporation of mediation initiatives within a bureaucratic judicial system.

1:20-2:30

Working Lunch/Building a Career in Dispute Resolution (optional)

Informal discussion and advice regarding study and business-building opportunities in the field of conflict resolution.

4:30-6:00

Minnesota Rule 114 Requirements (optional), led by Professor Sharon Press and required for those wishing to complete the requirements to qualify to mediate pursuant to court rule in Minnesota.

June 10, 2011, Friday

Reading: Chapter 10, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, Stulberg and Love (Text 2) [Document # 1]

Post-class Assignment:

Journal entry 5 – topic of your choice

Suggested topic: From a practical perspective, how would you view integrating mediation into your career plan.

9:00-1:10

Meeting Separately with the Parties

Examination of the purposes and strategies of meeting in caucus sessions with the parties. Participants will assume either the mediator's or a party's role and conduct a caucus. Analysis will follow.

Writing an Effective Agreement

Discussion and exercises regarding what should or should not be committed to the written agreement. Particular attention will be focused on format, language, "traps" to avoid, and other principles of good drafting.

June 11, 2011, Saturday: Class is being held in light of Monday's holiday

Reading: Chapter 11, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, Stulberg and Love (Text 2) [Document # 1]
Readings on Conflict, Dispute Resolution and Justice [Document #7]

Post-class Assignment:

Journal entry 6 – Required Topic: Justice and Qiu Ju What is justice in your view? Was Qiu Ju's quest for justice successful?

9:00-1:10

Bringing Closure to the Session

Strategies for effectively closing a session will be explored and practiced.

An Exploration of Justice and Dispute Resolution Processes: Qiu Ju

(a movie) (approximately 100 min.)

June 12, 2011, Sunday

No class.

10:00p.m.-5:00p.m. Boat trip to Szentendre (optional).

June 13, 2011, Monday

No class due to university closure for a Pentecost holiday.

June 14, 2011, Tuesday

Reading: Readings on Facilitation [Document #8]
Reading on Co-Mediation [Document #9]

Recommended but not required

For an excellent set of resources on facilitating constructive conversations visit <http://www.publicconversations.org>

Post-class Assignment:

Journal entry 7 – topic of your choice Suggested topic: Describe some lesson learned from a classroom simulation, exercise or roleplay. Is the "lesson" supported by theory derived from course reading?

9:00-1:10

Mindfulness in Mediation

Professor Christian Hartwig

Co-Mediation Orientation

Discussion and analysis of strengths and weaknesses of a co-mediation approach and the principles guiding the effective execution of team mediation. Practice will follow.

Facilitation Skills and Techniques to Foster Constructive Dialogue

An examination of the relationship between facilitation and mediation and of the tasks and tools used by facilitators. Practice will follow.

June 15, 2011, Wednesday

Reading: Reading on an example of complex cases: Glen Cove [**Document #10**]

Ethnic Minorities in Hungary: Democracy and Conflict Resolution Goncz and Gesko, 552 ANNALS OF THE AM. ACADEMY OF POL. AND SOC. SCI. 228 (July 1997) [**Document #11**]

Post-class Assignment:

Journal entry 8 – topic of your choice

Suggested topic: What particular benefit have you derived from studying mediation in this international setting?

9:00-12:00

Considerations and Strategies in Dealing with Complex Cases

Professors will "accompany" participants through a conflict analysis to determine the propriety and nature of a mediation intervention in a multi-party, multi-ethnic community conflict. Elements of the analysis will include: party identification; ripeness for intervention; mediator qualifications relevant for effective service; and pre-dispute entry issues and responsibilities. In small groups, participants will analyze a case study to develop performance skills for conducting a multiparty mediation. Elements of the analysis will include: structuring the sessions, capitalizing on role of advocates and spokespersons, planning considerations when cultural diversity is present, and using translators effectively.

12:00-1:10

Facilitation and Mediation of Disputes involving Ethnic Differences

Professor Borbala Fellegi

Presentation and film about a community mediation project in a Hungarian village.

1:45 TOUR OF COURTS (optional)

June 16, 2011, Thursday

Reading:

Chapter 12, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, Stulberg and Love (Text 2) [**Document # 1**]

Uniform Mediation Act [**Document #12**]

US Model Standards of Conduct for Mediators and European Code of Conduct for Mediators [**Document #13**]

Disputing Irony: A Systematic Look at Litigation about Mediation (excerpt), Coben and Thompson, 11 HARV. NEG. L. REV. 43 (Spring 2006) [**Document #14**]

Directive of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters (April 23, 2008) 15003/07 FINAL [**Document #15**]

9:00-11:40

Ethics and Confidentiality in Mediation

Discussion and exercises focusing attention on issues surrounding confidentiality and ethical dilemmas faced by mediators, particularly challenges to a mediator's impartiality, and the potential for abuse of discretion and power.

11:40-1:10 **An Overview of Mediation in Germany and Western Europe and Reports from Around the World**
Professor Christian Hartwig and Other Class Participants

June 17, 2011, Friday

Reading:

Critiques of Mediation [**Document #16**]

9:00-1:10 **Mediation Simulations**
Participants will conduct a complete mediation conference, beginning with the opening statement and concluding with the written agreement. Both participants and professors will provide feedback to the mediator. Analysis will follow completion of each simulation.

Reflections and Closure

2:15-4:15 **Final Paper** (students taking course for law school credit only)
Students will write an in-class, open-book analysis of their final mediation simulation in which they served as the mediator and respond to another question based on the course reading.