

Legal Educators Resource Share 2018

Note: **New material added at conference;** **Updated Material**

Featured Presentation:

A. ADR LISTSERVS AND CONFERENCES

Dispute Resolution Resources in Legal Education (DRLE)

The University of Missouri hosts a website and listserv at <http://law.missouri.edu/drle/>. The website includes a large collection of recent course syllabi, teaching materials, links to law school DR programs, and links to other resources. The teaching materials include simulations and exercises (including multi-stage simulations) and lists of student competitions, online bibliographies, and short course programs. *Note:* It can be hard to find from the Law School website, so if you don't have the URL, google "Missouri DRLE." Better yet, you can bookmark this page.

Joining the ADR Professor Listserv:

1. Address a message to: listserv@po.missouri.edu
2. In the body of the text, write: subscribe DRLE

AALS

Joining the Junior ADR Professor Listserv:

(junior = seven years or fewer in the academy)

1. Go to <https://connect.aals.org/p/us/to/> (you may need to login)
2. Click Add Subscription button
3. For "Category," pick "Section"
4. For "Topic," pick Junior ADR
5. Click Add.

Adding/Updating ABA Directory Info for your ADR Program

1. To get username and password, email Jen Reynolds (jwr@uoregon.edu)
2. To view directory, go to <http://adr.uoregon.edu/aba/>
3. To update directory, go to <http://adr.uoregon.edu/aba/admin/>

Indisputably Blog

The blog provides an online conversation with colleagues in DR and those in overlapping fields, linking dispute resolution scholarship, education, and practice. The bloggers provide announcements and running commentaries on the latest work in arbitration, mediation, negotiation, and other dispute resolution processes. You can subscribe and get an email every day when there is a new post.

<http://www.indisputably.org/>.

Annual Conferences of Interest to ADR Scholars (we can add to this at the conference)

1. AALS Annual Meeting (each January)
2. AALS Works-in-Progress (each fall)
3. ABA Dispute Resolution Section Annual Meeting (each spring)
4. Law & Society Association (each summer)
5. AALS Conference on Clinical Legal Education (each spring)
6. Association for Conflict Resolution (each fall)
7. International Association for Conflict Management (IACM) (summer – every other year in the US)
8. Works in Progress (each fall – 2018: October 4 - 6 at the University of Maryland Francis King Carey School of Law Center for Dispute Resolution)
9. National Association of Community and Restorative Justice Conference www.nacri.org
10. Global Alliance of Civil Collaborative Lawyers, Tampa www.collaborativelaw.us/events.php
11. Southeast Association of Law Schools SEALS www.sealslawschools.org [ADR sessions]
12. Association of Family and Conciliation Courts, Annual Conference <http://www.afccnet.org/Conferences-Training/AFCC-Conferences>
13. ABA Mediators' Institute
14. CADRE

Conferences 2018-19

1. **The Integrated Lawyer**, January 17-19, 2019 at UC Hastings Center for Negotiation and Dispute resolution will look at National Report on wellness and the legal profession and how to better support and integrate our whole selves in our work

Symposia

"Tower of Babel" Negotiation Theory Symposium

The University of Missouri hosted a symposium in October 2016 entitled, *Moving Negotiation Theory from the Tower of Babel Toward a World of Mutual Understanding*. The website, <http://law.missouri.edu/faculty/category/csdrr/16-symposium-csdrr/>, includes an annotated reading list, videos from the conference, and drafts of articles that were published in the Journal of Dispute Resolution. A summary of the articles is available at <http://www.indisputably.org/?p=10314>. A "virtual book club" of discussions with symposium speakers was published on the Indisputably blog at <http://www.indisputably.org/?p=9341>. These short book club posts would be good course reading assignments.

Additional Resources

1. Teaching/Training Materials

Legal Education, ADR, and Practical Problem Solving (LEAPS) Project <http://leaps.uoregon.edu/>

The Legal Education, ADR, and Practical Problem-Solving (LEAPS) Project is the work of the ADR in Law Schools Committee of the ABA Section of Dispute Resolution. It developed a website to help faculty

incorporate practical problem-solving” (PPS) into their instruction of a wide range of courses, including doctrinal, litigation, transactional, and ADR courses. The website includes:

- Descriptions of various teaching methodologies
- Suggestions for encouraging colleagues to include more PPS in their courses
- Possible “talking points” for discussing the incorporation of PPS into doctrinal courses
- A survey of how schools integrate practical problem-solving skills in their J.D. curricula
- Lists of consultants who can help incorporate PPS in specific courses
- Examples of course exercises and approaches for introducing PPS in doctrinal courses
- Links to relevant resources on other websites

The Academic Council of the Institute for Transnational Arbitration is pleased to announce the launch of a new website, [International Dispute Resolution Resources for Legal Educators](#).

The goal of this project is to gather, classify, and disseminate syllabi, notes, exercises, exams, and other original teaching materials prepared by international arbitration teachers from around the world. As a truly international endeavor, the collection will not be limited to materials written in English, but we also want to encourage the addition of materials written in Spanish, French, Portuguese, and perhaps other languages by teachers of international arbitration from other countries. We would like to encourage you to submit your own materials as well as reviewing the materials that are already available. In addition to collecting syllabi and other teaching materials, we are also interested in promoting an exchange of pedagogical approaches, innovative teaching techniques and other strategies, via a dedicated listserv ([ITA-LEL](#)). The website and the listserv are open and accessible to anyone who teaches in the area of international dispute resolution, either full or part-time. We are happy to answer any questions you may have about the purpose and use of the website and listserv. If you have any questions regarding logistics, please contact site administrator [Krishonne Johnson](#). *Submitted by Professor Manuel Gomez (Florida International University College of Law) and Professor Stacie Strong (University of Missouri School of Law)*

“Stone Soup” Dispute Resolution Knowledge Project

The Stone Soup Project is a collaborative effort of faculty, students, practitioners, educational institutions, and professional associations to improve teaching and learning about actual dispute resolution practice. Faculty assign students to conduct interviews and/or observe actual cases. Interviews involve parties and/or lawyers or other dispute resolution professionals. (The project is NOT a standardized database, which we originally considered.)

Some faculty like the Stone Soup idea generally but wonder if it would work in their courses or feel hesitant for other reasons. [This post describes some colleagues’ concerns and responses to those concerns.](#) In particular, the assignments need not add much, if any, workload; students generally can find interview subjects without faculty assistance; and Stone Soup can work well in almost any law school course.

Faculty have great flexibility in tailoring assignments to fit their instructional goals and circumstances. [This table illustrates variations in Stone Soup courses in the first year:](#)

- Class size
- Description of the Stone Soup assignment
- Whether the assignment was required, one option of an assignment, or extra credit
- Assigned paper length, if any

- Due date
- Percentage of grade, if any
- Whether the results of the assignment were discussed in class

For more information, see the [Stone Soup website](#) and this [post summarizing the first year's achievements](#).

Submitted by John Lande

The resources on this page <https://go.osu.edu/DCPaba> were compiled for "Re-framing Hate: Practice-Based ideas for Dispute Resolution's Role in Hate Incidents" and include resources from the Divided Community Project, Stop Hate Project, and UVA's Transforming Community Spaces, as well as Not in Our Town, NICD, and Living Room Conversations. Some resources have been used in the classroom, while others are ideas which conflict resolution practitioners might use to support communities facing hate. *Submitted by Bill*

Froehlich

VIDEOS

New **video for classroom use in teaching negotiation** that was recently produced at the University of North Carolina. The ten-minute video ("Dream Car") depicts several scenes of an automobile sale negotiation, focusing solely on price. It highlights several distributive moves and illustrates many of Robert Cialdini's influence principles. It also touches on issues of gender, ethics and culture. Rather than demonstrate what should be done, the video affords viewers an opportunity to identify what is going on, and to generate their own ideas of why the moves might be effective and how to respond or negotiate more effectively. Here's a link to the video: <https://player.vimeo.com/video/251747395> I have a pdf of teaching points available for instructors. Contact me if you'd like a copy or if you have any other feedback. **Sam Jackson** ssjackso@email.unc.edu

Video of Ugli Orange Negotiation and how to use it in a debrief *Email John Barkai* barkai@hawaii.edu to get a copy. *Transcript of the video is in the Nebraska Law Review*

ABA/Suffolk University Law School Dispute Resolution Video Center www.adrteacher.org

(roleplay instructions and most of the videos are protected to preserve their usefulness in class; for a password, **contact Dwight Golann** dgolann@suffolk.edu or user name: teacher password: aba123. **A New video** has been created by Dwight and Marjorie Aaron in memory of a pioneer in our field, the late Margaret Shaw and to make the video and roleplay on which it's based available for teachers to download at no charge. The background is this: The Harvard Program on Negotiation offers a 90-minute DVD showing Margaret Shaw mediating the "Termination Tempest" age discrimination case. The dispute involves an employee and CEO who demand apologies from each other, an abrasive plaintiff lawyer, a positional defense counsel and other issues. They always "felt that it's a terrific example of a mediator combining genuine empathy with firm management of the bargaining process, but have been concerned that the length and cost of the video limited its impact." After Margaret's passing, Bob Mnookin and Susan Hackley of PON gave them permission to create a 30-minute chaptered version of the video to be offered without cost. PON They enthusiastically supported the project, and the JAMS Foundation covered the cost of editing.

Class-in-a-Box

Dwight Golann reported that the ABA ADR Section is creating a new website. Its purpose is to help negotiation teachers, many of whom are adjuncts, to create the best possible classes and, by easing the burden of preparation, encourage more practitioners to teach. It will do so by creating “classes in a box.”

Each file folder on the site will contain everything a teacher needs to conduct one class: lesson plan, teaching note, roleplay instructions, powerpoints, and handouts. Classes will be searchable by words (e.g., “prisoner’s dilemma” or “interests”) and other factors (e.g., length of roleplay). People can offer copyrighted roleplays, but his hope is that as much as possible materials will be freely downloadable. The site, which will be up by the end of June, will be www.adrclassinabox.org.

Dwight will send out a request for contributions soon, and hopes that as many of us as possible will contribute a model class.

NegMOOC Videos: A compilation of video material from *Negotiation: Navigating Professional and Personal Interactions* (‘NegMOOC’) **Contact Noam Ebner for more information**
noamebner@creighton.edu

NegMOOC is a MOOC (Massive Open Online Course) launched in October 2014 by Noam Ebner, of Creighton University School of Law’s Werner Institute for Negotiation & Dispute Resolution.

This course, a basic introductory course on negotiation involving over 2,000 registered students, includes many video segments. Some of these are classroom scenes or set-piece videos of Noam teaching; others show conversations between Noam and other guest teachers - negotiation professors and practitioners; still others include animations explaining negotiation concepts and demonstrations of different skills and tools.

Topics covered in the course include:

- Negotiation orientations and strategies
- Interest-based negotiation
- Bargaining
- Preparation for Negotiation
- Communication Tools in Negotiation
- Ethics in Negotiation
- Online Negotiation
- Introduction to Mediation

All of the video material from the course – nearly 100 videoclips, ranging from two minutes to two hours long - are freely available on [Noam’s YouTube channel](#) (if the link doesn’t work, Google ‘Noam Ebner YouTube’)

Generally speaking, guest teachers have agreed that their material be used freely for educational purposes. Let me add on two requests:

- 1) While using videos involving guest teachers, please give these teachers full credit, telling students anything you know about the wonderful people who freely gave their time and energy to the course.

- 2) If you wish to use a video involving a guest teacher, for a purpose that goes beyond showing it in class or assigning it to students for home viewing, please be in touch with that teacher to ask permission; if you don't know how to contact them, drop me a line.

Written material used in the course is available on [my SSRN page](#) (Google 'Noam Ebner SSRN').

Of course, Noam is always happy to hear of settings, courses, trainings, etc. in which the material is used! The same goes for comments on the material, or ideas for creating new material.

Mediation Teaching Manual written by Lela Love and Josh Stulberg, *based on the Michigan Manual*, provides a step by step program for training mediators. To receive a copy, email Lela Love (love@yu.edu) or Josh Stulberg (Stulberg.2@osu.edu)

Simulations

- **Mitchell Hamline School of Law Dispute Resolution Institute Teaching Materials** on negotiation, client counseling, conflict resolution, drafting and ADR **Contact Jim Hilbert for more information:** jim.hilbert@mitchellhamline.edu
http://open.mitchellhamline.edu/dri_teachingmaterials/
- ABA Ombuds Committee: powerpoints for class; reading list; guest speaker lists [*Natalie Fleury*] <http://apps.americanbar.org/dch/committee.cfm?com=DR589600>
- www.arbitrationinfo.com Arbitration basics plus recent case updates

2. Classroom Techniques/Activities/Exercises

Idea on how to teach the DYNAD (Schneider and Brown): Divide class into 2 groups and put in 2 corners of the room. Give each group confidential (but identical) instructions: "Your goal is to move all of the chairs in the room to your corner." After the students fight, negotiate, give up, yield, and compromise, introduce the DYNAD and have them analyze their behavior. Experimenting first and moving to the theoretical explanation later inspires the students to actually read the article. They feel it was written *for* them and *about* them. **Yael Efron** yaele.law@gmail.com

Prepare **arbitration procedure orders** based on facts in cases in contract accompanied by observation of actual arbitrations and review of orders issued in the Stormy Daniels case **Richard Chernick**

Work with Family Law Course to integrate negotiation into course by teaching a brief session on negotiation before students negotiate a family law situation. **Ava Abramowitz**
abramowitz@law.gwu.edu

DeBola: Prisoners Dilemma Simulation-Game for NGOs

Awarded **Best Teaching Simulation of 2017**
10th Annual Teaching Case & Simulation Competition
Maxwell School of Government, Syracuse University

Role material and teaching guide available at

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2989442

DeBola is a prisoners' dilemma simulation-game for teaching topics of negotiation, conflict analysis and resolution, collaborative problem solving, and decision-making. Specifically, it does so in the context of NGOs and mission-driven organizations.

DeBola involves four NGOs working on health missions in Africa, which have been diverted to combat an outbreak of Ebola. The NGOs are tasked to administer a new, effective, Ebola vaccine called *DeBola*, in an attempt to turn back the tide of Ebola's spread. However, there are operational constraints, and over multiple iterations, the NGOs must make decisions regarding their operative path. In the framework of a prisoners' dilemma structure, the four NGOs must decide whether to collaborate or compete with one another, in a situation rife with uncertainty. Collaboration might lead to greater joint success in conducting vaccination operations. However, given that each NGO's funding is contingent on its own success in administering vaccines, each NGO is also pulled towards working alone. The outcome of their decisions affects them all, determining their organizational longevity and the degree to which they will achieve their mission. Often, these two factors conflict with each other – reflecting a real-life tension faced by aid organizations, non-profits, government agencies and other mission-driven organizations.

DeBola is a unique prisoners' dilemma simulation-game not only in its NGO setting and the mixed-motives decision-making this generates, but also in its assigning participants with individual role material in addition to their instructions, allowing for intra-group differences in motivations and preferred strategy.

- Free to use - and to disseminate to students, for use in their own training activities.
- File includes all the materials needed to conduct the simulation-game, as well as extensive notes for teachers on simulation -management and -debrief.

Noam Ebner is a professor in the Department of Interdisciplinary Studies, Graduate School, Creighton University. His e-mail address is noamebner@creighton.edu

Paperclip Negotiation

The goal of this exercise is the negotiation of a series of five or more trades starting with a paperclip and ending with something more valuable. The exercise is based upon Kyle MacDonald's One Red Paperclip Project, and his book called "One Red Paperclip." MacDonald bartered his way up from a red paperclip to a house in 14 trades within one year. (see appendix for full information) *Created by Hal Abramson* habramson@tourolaw.edu

The Pasta Wars, a prisoner's dilemma game is now available in ten or so languages, for use in different locales or cultural settings. *Submitted by Noam Ebner*
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200350

FlashPoint: Syria, 2014 An International Conflict Management Simulation

Noam Ebner, Yael Efron and Nellie Munin

Awarded **Best Teaching Simulation of 2013-2014**
7th Annual Teaching Case & Simulation Competition
Maxwell School of Government, Syracuse University

Role material and teaching guide available at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2476968

Legislative debate on Arbitration Policy: In my dispute resolution survey course this spring, I created a mock legislative hearing as a way to expose students to the policy issues involving consumer and employee pre-dispute arbitration agreements. Four students were designated as legislators; they ran the hearing. The rest of the students were assigned a role representing selected organizations with diverse viewpoints on arbitration, pre-dispute agreements, class action waivers, and non-disclosure agreements. The hearing was set up to consider 6 real bills that have been introduced in Congress and an imaginary bill based on the CFPB consumer finance rule that Congress rescinded. I provided the students with a fact sheet (see appendix A) that contained links to information about the bills and sources on the positions of the organizations. The students running the hearing allowed debate and exchanges in addition to prepared position statements and the result was lively and informative. We did run out of time in the 75-minute class, so I suggest selecting fewer bills. **Contact Ellen Deason** deason.2@osu.edu

Incorporating ADR into Civil Procedure course, based on the idea of Revolving Doors (Peter Hoytt, 1998) a movie that portrays two parallel worlds of one woman. A dispute is presented to the class (consumer dispute) and the students explore the various ways in which it can be resolved (litigation, small claims, arbitration, mediation, negotiation, etc.) Then we debrief the pros and cons of each mechanism **Contact Yael Efron**

Gambits: lists of lines that students can use to repeat out loud in a Barkai Chorus to teach how to break impasse, make the final offer, solicit the first offer, etc. There are some for negotiation, mediation, mediation advocacy, breaking impasse, etc. **Contact John Barkai** barkai@hawaii.edu

Teacher provides a **negotiation scenario**. Students pair up and role play. After they complete the negotiation under timed conditions, they discuss. Each can reveal extra confidential information provided in his/her individual role instructions. **Siprachanh Chanthaphaychith**

In 1st Semester Lawyering class, conduct a mediation exercise where students are paired against each other to serve as advocates. The problem they worked on is based on the facts from their Legal Research and Writing Course. Students in the mediation course serve as mediators. Thus, this exercise integrates three course experiences. **Rafael Gely** gelyr@missouri.edu

Med Mal mock mediations; negotiation exercises contact Chaton Turner turnerc@upmc.edu

5 Minute First Aid Kit *see appendix 2* **contact Kim Wright** [<jkimwright@gmail.com>](mailto:jkimwright@gmail.com)

2017 ideas

Empathy Skills Card Game – ask **John Ford**

“Don’s Negotiation” – use theatre students as parties; have law students send final agreement memo to the “clients” for reaction [**Lauren Newell**]

Last Assignment – have (LLM) students write Oath of Office they want to take when they return home and at last class have them take their oaths (invite judges and family; film and provide a copy) [**David Hoffman**]

Use Hooters case to help students understand arbitration clauses: have the students guess what disputes might come up (sexual harassment and FLSA) and then list components of arbitration clause; ask students to draft arbitration clause which will protect Hooters; and then push the students to consider what the clause would look like if they really had no shame -- what would discovery look like, motions, fees... [**Michael Moffitt**]

At end of semester ask students to identify 10 challenges for clients and then try to come up with possible tech solutions. Examples include BuzzFeed quizzes; identification of providers [**Alyson Carrell**]

Find 3 law firm websites; draft home page for “their” law firm [**John Lande**]

Call Verizon customer service (on speaker phone in class) and ask to negotiate the arbitration clause [**Ben Davis**]

First day of Arbitration course, have students try to arbitrate a 3 line clause in an international arbitration involving Chinese party and Canadian party (use different languages) – helps students understand complexities of international arbitration [**Ben Davis**]

System Design/Project Management (short intensive class): divide class into consulting teams and give 1.5 days to figure out assessment and presentation; rest of class sit as board of directors and instructor as CEO – vote if want to hire the consultant [**Kathy Constantino**]

Have students imagine a conflict they are personally having and answer a series of “classic mediator simquestions” found at www.ronkelly.com and identify which questions help them to see their conflict differently [**Ron Kelly**]

Use an actual arbitration clause a student at Suffolk Law School was asked to sign upon accepted employment in a law firm. While not an egregious clause, it has subtle and not-so-subtle advantages for the

firm. Students can be split into groups and asked to analyze the clause from the perspective of the firm and the student. [see attachments] [Dwight Golann]

Backwards/Forwards From Andrea Schneider (andrea.schneider@marquette.edu)

This is quick exercise to run with the entire class. It teaches the importance of clear communication and the challenges of coordinating what we are doing and what we are saying. Other communication lessons and team lessons can also be drawn out with more discussion time.

In the middle of a circle, the leader will give instructions: Backward, forward, left, right in a multitude of combinations. For the first round, the circle participants repeat the exact word and do that action (the leader says backward, the participants say backward and move backward). In the second round, the circle participants say the opposite of the word and do the opposite (the leader says backwards, the participants say forward and move forward).

In the third round, the circle participants say the same words as the leader but do the opposite (the leader says backwards, the participants say forward and move backward). To the extent that the group has managed to follow along up to now (and it usually takes a while at each round), the third round completely throws everyone off. We then discuss the challenge of cognitive dissonance, of matching our words and our actions, and other negotiation lessons.

From Alyson Carrel (a-carrel@law.northwestern.edu)

Use <http://www.gosoapbox.com/> during live mediation demonstrations or videos in class to capture students' thoughts. When I am planning to conduct a live mediation or show a video, I create an event on this site and ask students to log in and share their thoughts/comments/questions while the mediation is going on. Instead of writing notes on paper or in Microsoft Word on their laptop, this website allows all the students to see each other's comments and questions and start a dialogue in real time. I find that students stay far more engaged with the demonstration when I ask them to use this website. In addition, students (and faculty) are able to answer each other's questions in real time without having to wait for the demonstration to finish. Last, there is a system for students to indicate that they share the same concern or have the same question using something similar to the "like" button on Facebook. The professor can then focus the post-demonstration debrief on those comments that had the most student interest.

Wearable cameras- Each student wears a camera that captures their partner's negotiating behavior. The resulting video gives each student a true 2nd person perspective of their negotiating style instead of the observer 3rd person perspective we typically see from a video camera or laptop sitting across the table or on a tripod across the room taking the role of observer.

Additional Ideas from the Resource Share 2016

- Use skype to debrief negotiations which were done with other schools
- Negotiation 360 ⁹
<https://itunes.apple.com/us/app/negotiation-360/id949271941?mt=8> [\$2.99]

Harvard Business School Professor and award-winning author Michael Wheeler created Negotiation 360^o to enhance your ability to reach agreement and resolve disputes. Its interactive features are based on cutting edge theory and proven best practices. Suggestion for classroom use over the course of the semester.

- Visualize and identify “best negotiator” at beginning of semester and identify “why” and then revisit the activity at the end of the semester – choose a new one and compare
- During introductions to the class have the group develop a “constitution” for the learning environment they wish to have
- JAMSFoundation.org videos (including ones on sexual harassment cases) available on the website. A limited stock of dvds and a teachers’ manual are available to educators upon request to David Brandon at JAMS Foundation DBrandon@jamsadr.com

Contact Jill Gross for more information jgross@law.pace.edu

Neutral selection activities for both mediation and arbitration classes. Allows discussion on qualities of a mediator and use of a model “rank and strike” list for arbitrators.

Contact Cynthia Alkon for more information calkon@tamu.edu

Invite a guest speaker to address the class via skype, e.g., Jeff Thompson on hostage negotiation

Contact Susan Exon for more information snexon@laverne.edu

Use Andrea’s “Recipe for Success” activity at the beginning of the semester and again at the end to see how the students’ ideas have developed and changed.

Contact Jay Folberg for more information JFolberg@jamsadr.com

Contact your local JAMS office to request opportunity for students to observe real mediations

Contact Jim Coben for more information james.coben@mitchellhamline.edu

A Quick Getting to Know Each Other Intro Exercise

Everyone makes up a “Negotiation Superhero” nickname for themselves and writes it on a strip of paper. All names into a hat; each student picks a name other than their own. Everyone then circulates trying to find the student who matches up with the nickname they pulled out of the hat. Quick interview to discover real name, type of student (JD, MSL, other), and rationale for the superhero nickname. Interviewer then introduces that person to the class.

A few fun ones from this semester:

Super Pie Expander; The Manipulative Marvel; “Split the Difference My Way” Man; The Equalizer; The Balancer; The Terminator; The MindBender; BATNAMan; ToolKit; The Allwininator
After introductions are concluded, I ask everyone to stand, think of their superhero nickname and then power pose for 10 seconds. I then very briefly lecture about mood and provide youtube link to Amy Cuddy’s popular “Your Body Language Shapes Who You Are” TEDTalk (<https://www.youtube.com/watch?v=Ks-Mh1QhMcher>), as well as a link to one of her articles on the topic (Cuddy, Amy J.C., Caroline A. Wilmuth, and Dana R. Carney. “The Benefit of Power Posing Before a High-Stakes Social Evaluation.” *Harvard Business School Working Paper*, No. 13-027, September 2012). Students then do first basic negotiation of the course.

During group debrief, students can only make comments using their superhero nickname.

Contact Michael Moffitt for more information mmoffitt@uoregon.edu Teaching on the Law of Settlement – read actual contracts to understand negotiation theory and value creation

3. Ted Talks/You Tube Videos/Pod Casts...

This American Life: When the Beasts Come Marching In: Beaching and Moaning
www.thisamericanlife.org Great real life example of public issue with two sides and how conflict spirals, demonization of others, increase in positions, etc. Used to set stage and how to ask powerful, non-defensive questions of the “other” side. Ask Toby Guerin
tguerin@law.umaryland.edu

Favorites from David Hoffman ([TEDx Talk on “Lawyers as Peacemakers”](#))

Here’s a partial list but if you want to see it all go to www.tinyurl.com/ABA-DR-Video-Links

“**Fairly Legal**” (which died after three seasons) – each episode was worse than the one before, BUT the pilot episode (perhaps the best) has an initial scene in which Sarah Shahi, playing the mediator, stops for coffee on her way to work on her first day as a mediator, and ‘mediates’ a robbery: https://www.amazon.com/Fairly-Legal-Season-1/dp/B004IJQ792/ref=tmm_aiv_title_1?encoding=UTF8&qid=1467507783&sr=8-1 \$2.99 on Amazon video

My most favorite media riff for mediation is this 8-minute audio segment from This American Life in which conflict interrupter (i.e., mediator) **Tim White from Chicago's Project Ceasefire** talks about mediating a gang conflict: <http://www.thisamericanlife.org/radio-archives/episode/358/social-engineering?act=0#play>

Second favorite: the **Haggling Scene** in Monty Python’s “The Life of Brian”:
<https://www.youtube.com/watch?v=u75XQdTzZRc>

Third favorite: Michael ineptly mediates a conflict at work, in “The Office”:
<https://www.amazon.com/The-Office-Season-2/dp/B002EQSQEK> Season 2, episode 21
 (“Conflict Resolution) -- \$2.99 from Amazon

Other favorites, in no particular order:

“Wedding Crashers” – first three minutes (truly vulgar, but my students love it):
https://www.youtube.com/watch?v=h_IlyeLhmF0

The Break-Up – ethical issues in mediation <https://www.youtube.com/watch?v=yiZpb7GPLYs>

Everybody Loves Raymond – active listening:
<https://www.youtube.com/watch?v=4VOubVB4CTU>

ABA 30-second promo, analogizing commercial mediation to kids’ squabbling:
<https://www.youtube.com/watch?v=TQX6lp8p-bc>

Duel at the Mall (illustrates conflict escalation):

<https://www.youtube.com/watch?v=NBvysuewIOs>

“The Affair” – showing two parties’ differing recollections of a mediation: Season 2, Episode 1:

<https://www.amazon.com/The-Affair-Season-2/dp/B0181P3DSQ> \$2.99 (a cringe-worthy depiction of how *not* to mediate); Husband’s recollection: 17:50 - 24:20; Wife’s recollection: 38:40 - 43:00

How people can have starkly differing recollections on an event:

<https://www.youtube.com/watch?v=PxQ9Gx2-ceM> This American Life – Robert Krulwich story about Jackie Kennedy

“The Fifth Element” – battle scene in Bruce Willis sci-fi thriller, depicting society’s dubious view about the value of negotiation: <https://www.youtube.com/watch?v=3oKwg6W05MU>

BATNA assessment: U.S.S. Montana (commercial for navigation system, showing how negotiating with too much testosterone can be problematic)

<https://www.youtube.com/watch?v=yeZ-RFYIMao>

“Disclosure” has a mediation scene that looks more like a deposition, but with a judge presiding (useful for showing what mediation *isn’t*): https://www.amazon.com/Disclosure-Michael-Douglas/dp/B002VTL3JU/ref=sr_1_2?ie=UTF8&qid=1467510801&sr=8-2&keywords=disclosure \$3.99 from Amazon Video

“The Good Wife” – I agree with Jim Alfini’s description of the mediator as carrying a gavel, but it’s useful as a caricature of heavy-handed mediation: <https://www.amazon.com/The-Good-Wife-Season-3/dp/B005PK57NU> Season 3, episode 3 (“Get a Room”) – Free for Amazon Prime members

A brilliant depiction of our internal voices -- and the struggle among our various parts The trailer from the movie "Inside Out" <https://www.youtube.com/watch?v=MC3XuMvsDI>

Last but not least, is the best video I have ever seen on diversity: "Love Has No Labels":

https://www.youtube.com/watch?time_continue=19&v=PnDgZuGlhHs

P.S. For any of you who are curious about how the "dancing skeleton" images were made, here's a short video that explains the technology behind "Love Has No Labels":

https://www.youtube.com/watch?v=pzkcNV_3JoQ

TedTalks by our colleagues:

- Kim Davis
- David Hoffman
- Andrea Schneider
- Sukhsimranjit Singh

PON HLS (YouTube Channel) – book talks, etc. [James Kerwin jkerwin@law.harvard.edu]

From Ellen Waldman ellenw@tjisl.edu

I begin my Advanced Mediation class (the students have already taken a 35 our Intro to Mediation training) by asking students to watch Brene Brown's TED talk on The Power of Vulnerability at <https://www.youtube.com/watch?v=iCvmsMzIF7o>. And, then, I ask them- Why would a class on mediation begin with this lecture. What do the themes of the lecture have to do with mediation?

From Lela Love love@yu.edu

Short clip from the Office on mediation <https://www.youtube.com/watch?v=PJbOehAii6c>

The link below to a Tedx talk by Brad Heckman (the CEO of the NY Peace Institute) is a funny and inspiring introduction to mediation.

<http://tedxtalks.ted.com/video/Mediation-and-mindfully-getting>

From Bruce Meyerson brucemeyerson@msn.com

Robert Cialdini's work on influence

www.Influenceatwork.com/videos

From Shala Ali sali@hku.hk

Negotiation episode in the Office (season 3, episode 18)

<http://www.imdb.com/title/tt0983623/>

I have used it to get students to start thinking about the difference between technique and process and also to reflect on efficacy

Books/Articles

Negotiator's Desk Reference, published by DRI Press, edited by Chris Honeyman and Andrea Kupfer Schneider. "[T]his book [of two volumes containing over 100 chapters and authors from around the world] ... represents our considered effort to gather everything we can that we believe to be key to understanding how negotiation works, and how it can be used more effectively in many settings." <https://www.ndrweb.com/>

Decision Tree Analysis for Lawyers by Marjorie Aaron contains simple problem sets for teaching Marjorie.aaron@gmail.com

Essential Skills in Negotiation by George Seidel

Negotiating for Success: Essential Strategies and Skills by George Seidel *available on Amazon*
Siprachanh Chanthaphaychith

Eight Common Mistakes that Mediators Makes When Trying to Generate Business
https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/newsletter/nov2017/rapaport_8_common_mistakes.authcheckdam.pdf Anna Rappaport <anna@excellerationcoaching.com>

Discovering Agreements: Contracts that Turn Conflict to Creativity by Linda Alvarez (ABA 2016)

Demonization in International Politics: Barrier to Peace in the Israeli-Palestinian Conflict by Linn Normand (New York: Palgrave Macmillan, 2016)

Structured Negotiation Lainey Feingold (ABA 2016)

Lawyers as Change Makers: The Global Integrative Law Movement by Kim Wright (ABA 2017)

Digital Justice: Technology and the Internet of Disputes by Ethan Katsch and Orna Rabinovich-Einy (Oxford university Press, 2017)

Stories Mediators Tell: World Edition Leah Love and Glen Parker, editors (ABA 2017) (*contact Lela (love@yu.edu) for more information about how she used a story in a final exam*)

The New Handshake: Online Dispute Resolution and the Future of Consumer Protection by Amy Schmitz and Colin Rule (ABA 2017)

Arbitration and Mediation of Employment and Consumer Disputes Lexis/NY Center for Employment Law

China International Transaction and Law Handbook

Principles and Practice of Commercial Arbitration

From Sharon Press Sharon.press@mitchellhamline.edu

The Rethinking Negotiation Teaching series can now be found at <http://open.mitchellhamline.edu/dri/> All of the books are available to download for free (by chapter).

From John Lande LandeJ@missouri.edu

Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money, 2d Edition, includes a teacher's manual. The manual includes several syllabi using this book (including from Jill Womble and Leigh Ann Roberts as well as some of mine), simulations, teaching notes, assessment forms, and instructions for writing assessments (aka journals). The simulations include fishbowl (or "improv"), single-stage, and multi-stage simulations. You are welcome to use the manual regardless of whether you adopt the book. You can download the manual from the [webpage](#), using the password "penmanual."

Theatre/Plays

Oslo
Camp David

ADR Competitions

International Commercial Mediation Competition sponsored by CPR in Sao Paulo, Brazil – April 17 – 18, 2018 <https://www.cpradr.org/events-classes/international-mediation-competition/2018>

ACCTM and NY State Bar \$10,000 Prize available for JD/LLM students; papers due June 1
<http://www.americanjournalofmediation.com/pg13.cfm>

From Elayne Greenberg greenbee@stjohns.edu

St. John's/FINRA Dispute Resolution Triathlon problems can be accessed at <http://www.stjohns.edu/law/hugh-l-carey-center-dispute-resolution/securities-dispute-resolution-triathlon>. The problems can be found at the bottom of the page in the section Securities Dispute Problems 2009-2017.

InterNational Academy of Dispute Resolution (www.INADR.org) sponsors an international law school mediation tournament during the spring semester in Chicago
<http://www.luc.edu/law/centers/advocacy/adr/index.html>

ABA Section of Dispute Resolution Mediation Representation Competition
http://www.americanbar.org/groups/dispute_resolution/awards_competitions/law_student_national_representation_in_mediation_competition.html

ABA Negotiation Competition
<http://abaforlawstudents.com/events/law-student-competitions/practical-skills-competitions/negotiation-competition/>

ABA Arbitration Competition
<http://abaforlawstudents.com/events/law-student-competitions/practical-skills-competitions/arbitration-competition/>

Client Counseling Competition
<http://abaforlawstudents.com/events/law-student-competitions/practical-skills-competitions/client-counseling-competition/>

International Chamber of Commerce (ICC) Mediation Representation Competition
<http://www.iccwbo.org/training-and-events/competitions-and-awards/mediation-week/>

Annual Willem C. Vis International Commercial Arbitration Moot
<https://vismoot.pace.edu/>

The James B. Boskey Law Student Essay Contest on Dispute Resolution, **entry deadline June 16, \$1000 first place prize and publication on the ABA Section of Dispute Resolution website.**
https://www.americanbar.org/groups/dispute_resolution/awards_competitions/james_b_boskey_law_student_essay_contest_on_dispute_resolution.html

South Texas College of Law Houston Energy Law Negotiation Competition

<http://www.stcl.edu/academics/center-for-conflict-resolution/energy-law-negotiation-competition/>

Dispute Resolution Processes: Theory and Practice

Spring 2018

Professor Ellen E. Deason

Policy Debate: An Airing of Views before a Congressional Committee

A fictional Congressional Committee is convening a hearing for the purpose of considering potential changes to the law on the enforcement of pre-dispute arbitration agreements and the class action waivers that often accompany them. Those testifying should start with a short introduction of their organization and its interests and then speak in favor or against proposals that are relevant to their organization.

The Committee will consider the following possibilities:

1) Enact legislation identical to the Arbitration Agreement Rule issued in 2017 by the **Consumer Financial Protection Bureau** (which in reality was disapproved by a joint resolution of Congress in November 2017 under the Congressional Review Act).

<https://www.consumerfinance.gov/arbitration-rule/>

Background: The rule applied to the consumer finance sector (banks, credit card issuers, loan transactions, etc.), not in other consumer or employment contexts. It allowed these companies to include arbitration clauses in their contracts, but prevented them from precluding group actions.

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rule-ban-companies-using-arbitration-clauses-deny-groups-people-their-day-court/>

The rule built on a major study of arbitration by the CFPB, which concluded that arbitration agreements with class prohibitions act as claim-suppression devices. Because most consumer claims are small value, they cannot afford to try to vindicate their claims individually.

<http://www.consumerfinance.gov/reports/arbitration-study-report-to-congress-2015/>

Press release on the report: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-finds-that-arbitration-agreements-limit-relief-for-consumers/>

For an alternative view of the data:

https://www.americanbar.org/publications/blt/2017/05/07_lamplay.html

All comments on the proposed CFPB regulation can be viewed here:

<https://www.regulations.gov/docket?D=CFPB-2016-0020>

2) Enact the **Arbitration Fairness Act** of 2017 – S. 537; H.R. 1374.

<https://www.congress.gov/bill/115th-congress/senate-bill/537/text>

Background: The Act would prohibit enforcement of pre-dispute arbitration agreements that require arbitration of a consumer, anti-trust, employment, or civil rights dispute. Similar legislation has been introduced repeatedly in Congress, but it has never been reported out of committee.

3) Enact the **Fairness in Nursing Home Arbitration Act**

110th Congress (2007-2008) S. 2838

Background: The Act would bar enforcement of pre-dispute arbitration agreements between nursing homes or long-term care facilities and their residents.

See Senate Report (2008):

<https://www.congress.gov/congressional-report/110th-congress/senate-report/518/1>

In 2016, the Centers for Medicare & Medicaid Services (CMS) issued a rule that prohibited pre-dispute agreements for binding arbitration and listed requirements nursing facilities must follow if they propose arbitration post-dispute. Litigation ensued.

[https://www.ahcancal.org/News/news_releases/Documents/CMS%20Arbitration%20Rule%20-%20complaint%20\(10-16-16\).pdf](https://www.ahcancal.org/News/news_releases/Documents/CMS%20Arbitration%20Rule%20-%20complaint%20(10-16-16).pdf)

In 2017, CMS proposed revisions that removed the prohibition on pre-dispute arbitration agreements.

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-06-05.html>

4) Enact the **Restoring Statutory Rights and Interests of the States Act** of 2017 – S. 550; H.R. 1396

<https://www.congress.gov/bill/115th-congress/senate-bill/550>

Background: The Act amends the Federal Arbitration Act to invalidate pre-dispute arbitration agreements in certain contracts for claims brought by individuals and small businesses for claims arising from federal or state statutes, the U.S. Constitution, or a state constitution.

5) Enact the **Safety over Arbitration Act of 2017** – S. 542

<https://www.congress.gov/bill/115th-congress/senate-bill/542>

Background: For claims that concern hazards relevant to public health and safety, the Act would amend the Federal Arbitration Act to require parties to agree in writing to arbitration after the claim arises. Arbitrators would be required to provide a written explanation of the award, which could not be sealed.

6) Enact the **Court Legal Access and Student Support (CLASS) Act** of 2017 – S. 553; H.R. 2301

<https://www.congress.gov/bill/115th-congress/senate-bill/553>

Background: Amends the Federal Arbitration Act to make it inapplicable to enrollment agreements between students and certain institutions of higher education.

7) Enact the **Ending Forced Arbitration of Sexual Harassment Act** of 2017 – S. 2203; H.R. 4734

<https://www.congress.gov/bill/115th-congress/senate-bill/2203>

see also H.R. 4570 <https://www.congress.gov/bill/115th-congress/house-bill/4570>

Background: Amends the Federal Arbitration Act to make pre-dispute arbitration agreements invalid and unenforceable if they require arbitration of a sex discrimination dispute.

commentary: <https://www.lexology.com/library/detail.aspx?g=9cbfe97f-1410-4fe3-a349-38ea74f43a13>

8) **Maintain the status quo** with full enforcement of pre-dispute arbitration agreements and class action waivers.

Appearing at the Hearing

- AARP (represents retirees and senior citizens)

<https://www.aarp.org/caregiving/health/info-2017/trump-nursing-home-arbitration-fd.html>

- Alliance for Justice

<https://www.regulations.gov/document?D=CFPB-2016-0020-4224>

<https://www.afj.org/?s=arbitration>

https://www.afj.org/wp-content/uploads/2014/10/AFJ9679_Lost_Brochure.pdf

- American Bankers Association

<https://www.aba.com/Press/Pages/071017CFPBArbitrationRule.aspx>

- American Bar Association Section of Dispute Resolution

<https://www.regulations.gov/document?D=CFPB-2016-0020-5905>

- American Health Care Association (federation of organizations that represent assisted living and nursing facilities—sued & obtained a preliminary injunction to block the initial 2016 CMS rule)

https://www.ahcancal.org/advocacy/issue_briefs/Issue%20Briefs/Arbitration_IB.pdf

- Carlson, Gretchen (former Fox News anchor)

<https://www.rollingstone.com/tv/news/watch-samantha-bees-incisive-look-at-forced-arbitration-sexual-assault-w516203>

- The Century Foundation

<https://tcf.org/content/report/how-college-enrollment-contracts-limit-students-rights/>

- Consumer Bankers Association

<http://www.consumerbankers.com/cba-media-center/media-releases/cba-statement-president%E2%80%99s-signing-arbitration-cra>

- Heritage Foundation

<https://www.heritage.org/report/the-unfair-attack-arbitration-harming-consumers-eliminating-proven-dispute-resolution-system>

<http://fortune.com/2017/10/26/senate-vote-on-arbitration-rule/>

- House Liberty Caucus

<https://www.americanbanker.com/opinion/cfpb-arbitration-rule-is-an-undeniable-win-for-consumers>

- Microsoft Corporation

https://www.washingtonpost.com/news/wonk/wp/2017/12/20/microsoft-just-handed-metoo-a-major-victory/?utm_term=.4b6b8aa4d8ab

https://www.washingtonpost.com/opinions/microsoft-has-had-its-metoo-moment-your-turn/2017/12/22/b0e5123e-e699-11e7-ab50-621fe0588340_story.html?utm_term=.b98e04f448d0

- National Association of Attorneys General

<http://thehill.com/regulation/administration/373715-all-us-ags-demand-congress-end-mandatory-arbitration-in-sexual>

see also:

<https://www.regulations.gov/document?D=CFPB-2016-0020-4245> (Minnesota)

<https://www.regulations.gov/document?D=CFPB-2016-0020-4223> (Iowa)

<https://www.regulations.gov/document?D=CFPB-2016-0020-4237> (6 states)

- National Consumer Law Center

<https://www.nclc.org/issues/forced-arbitration.html>

<https://www.regulations.gov/document?D=CFPB-2016-0020-5831>

<http://www.studentloanborrowerassistance.org/>

- NELA: National Employment Lawyers Association

<https://www.nela.org/index.cfm?pg=mandarbitration>

- National Organization for Women

<https://now.org/about/conference-resolutions/2014-national-now-conference-resolutions/#arbitration>

- U.S. Chamber of Commerce

<https://www.regulations.gov/document?D=CFPB-2016-0020-3941>

<https://www.uschamber.com/series/above-the-fold/agency-goes-rogue-arbitration-rule>

<https://www.uschamber.com/litigation-update/us-chamber-files-legal-challenge-cfpbs-anti-arbitration-rule>

Appendix B
5 minute first aid kit pdf