

ASSESSMENT AND REDESIGN OF TEACHING “THEORIES & METHODS OF
ALTERNATIVE DISPUTE RESOLUTION” ONLINE

by

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ABSTRACT

Assessment And Redesign Of Teaching “Theories & Methods Of Alternative Dispute Resolution” Online

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This work is in response to a request by the co-directors, Tasha Souza PhD and Elizabeth Watson PhD, of the Institute for Study of Alternative Dispute Resolution (ISADR), to evaluate and possibly redesign their current, “Theories & Methods of Alternative Dispute Resolution” course offered online.

In order to accomplish this task of evaluation and redesigning of the “Theories & Methods of Alternative Dispute Resolution” course, I synthesized current literature on the subject of online education and its affects on student learning outcomes, in conjunction with interviewing fourteen experts on the subject of online education and/or mediation training.

Consequently, this work consists of two parts. Part one is the theoretical portion of this thesis/project, which primarily addresses whether internet-based courses have the same, or better, student learning outcomes as conventional “classroom” courses. Within this part, I also interviewed fourteen experts within the field of mediation and/or online education, followed by the analysis of the interviews. Part two is the practical application of this thesis/project, which consists of an assessment and subsequent redesign of the

existing online course, “Theories & Methods of Alternative Dispute Resolution” course offered through the Institute of Alternative Dispute Resolution (ISADR) at Humboldt State University, based on the theoretical part of this work.

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Finally, I would like to thank my daughters Nicole and Stefanie for their continued moral support. I am hoping that my accomplishment this late in my life will inspire them to go out and get the Ph.D. that I would have gone for if I would have had the opportunity to start my education earlier in life. “Go for it, Girls!” This work is dedicated to them—my family, and in particular, my late father Otto Heinrich Rutishauser Jr. who lovingly insisted in my pursuit for higher education. “Papi, mittenand hämers guet gmacht!”

TABLE OF CONTENTS

ABSTRACT	iii
ACKNOWLEDGEMENTS	v
TABLE OF CONTENTS	vi
CHAPTER ONE: ONLINE EDUCATION AND ITS AFFECTS ON STUDENT LEARNING OUTCOME	1
The Development of Online Education	4
Review Of The Literature Addressing Learning Outcomes	8
Summary Findings About Online Education.....	18
CHAPTER TWO: METHODS.....	21
CHAPTER THREE: INTERVIEW ANALYSIS.....	25
CHAPTER FOUR: THE EVALUATION AND REDESIGN OF THE ONLINE “THEORIES & METHODS OF ALTERNATIVE DISPUTE RESOLUTION COURSE”	36
Recommendations.....	38
The New Layout of the Online “Theories & Methods of Alternative Dispute Resolution,” Course	39
REFERENCES.....	42
APPENDIX A: FIRST EMAIL	45
APPENDIX B: SECOND EMAIL.....	47
APPENDIX C: SHORT BIOGRAPHIES OF THE INTERVIEWEES.....	50
APPENDIX D: SYLLABUS	54
APPENDIX E: MODULE 1	66
APPENDIX F: MODULE 2	72

APPENDIX G: MODULE 3.....	78
APPENDIX H: MODULE 4.....	84
APPENDIX I: MODULE 5	97
APPENDIX J: ETHICAL STANDARDS OF PROFESSIONAL RESPONSIBILITY .	104

CHAPTER ONE: ONLINE EDUCATION AND ITS EFFECTS ON STUDENT LEARNING OUTCOME

In order to assess the online “Theories & Methods of Alternative Dispute Resolution,” originally designed by Dr. Betsy Watson and Christine Taylor M.A.,¹ I will start by examining online education in general. Why is there such a high demand in online education and how did it come to be in the first place?

Oblinger (2000) pointed out that Education has begun to be viewed as a market. Between pre-school, K-12, higher education, and adult learning, the education market brings in over 665 billion dollars annually here in the United States of America. Higher education alone accounts for 225 billion dollars per year. This increase in spending on higher education is viewed as a substantial market. The strength of this market and the room for growth attracts many investors who are eagerly investing money into online educational opportunities. The expected pay-off for online education is enormous and far exceeds the other huge Internet industries, such as music downloads, Compact Discs (CDs), and flowers.

Within our capitalistic system, providing online educational services promises to be a highly competitive market well into the future. Online education should not be viewed as a way to turn current face-to-face students into online students, but rather as another way to “offer important new options and opportunities for women and men

¹ Christine Taylor, M.A., has been formally involved in the conflict resolution field for the past eight years. Once the Associate Director of ISADR, she has been providing guidance to course participants as training coach for six years. She also helped design the “Theory & Methods of Alternative Dispute Resolution.”

interested in higher education, courses, or degrees” (Kramarae 2001:4), who are not able to—for whatever reasons—attend face-to-face classes. While the investor’s goal is to make money, the core idea is to increase educational opportunities for potential students who otherwise would not be able to attain higher education.

Besides the lucrative moneymaking opportunity, technology has also been the driving force behind a drastic paradigm shift in the area of higher education. There has been a significant change in how education is delivered to students; students no longer have to choose between freedom of scheduling and live interaction with the instructor and other students. Consequently, Allen and Seaman (2006) from the Sloan Consortium argue that there are currently over two million students taking online classes from educational institutions within the United States, and this number is rising steadily over the past few years by almost twenty percent.

Allen and Seaman (2003) argue that public institutions still overwhelmingly lead the way by having online student numbers outnumber the private institutions by well over three-quarters. Scarafioti and Cleveland-Innes (2006) claim that online education has entered the mainstream, and that the long-term growth strategy of most schools encompasses online course offerings. In order for many public educational institutions to meet their recruitment goals, they must provide innovative online delivery of instruction and a multitude of online student services. In fact, Allen and Seaman (2003) point out that ninety-seven percent of all public higher education institutions already “offer at least one fully online or blended course.” (p.2). She also states that forty-nine percent of all public institutions offer complete online degree programs. The long-term strategies of

most public educational institutions include the further development of online programs, because it will enable learning institutions to expand access to more potential students, despite projected constraints on capacity.

Judy Nix (2005) argues that, “Learning is not the medium. It is about the outcome” (p.114). She argues that a blended learning approach improves the student-learning outcome. “Blended learning is the combination of two or more delivery modes to meet a specific set of learning objectives. So in some respects, blended learning has been with us since the beginning of time” (Nix 2005:109). In essence, matching the learner’s needs to the learning objectives can attain this goal. An online course has the ability to facilitate the learner’s specific needs by offering the ability to learn at his or her own pace, at anytime, anywhere, and anyplace; hence, the optimal learning outcome can be achieved.

While there are many aspects to online education, such as technological advances, financial opportunities for investors, meeting recruitment goals for public schools, and so forth, this paper addresses the overarching question posed by institution administrators, instructors, and students of what it take to be a successful online student. In other words, I am attempting to answer how a strictly online learning environment affects the student-learning outcome when compared to conventional face-to-face classes. In order to address these valid concerns, I will begin by providing a short history of how online education has developed, and then provide an extensive review of the current literature, followed by a conclusion that includes some suggestions based on the literature review.

The Development of Online Education

Online learning programs are an offspring of distance education, which is “defined as learning experiences in which students and instructors are separated by space and/or time” (Cavanaugh, Gillian, Kromrey, Hess, and Blomeyer 2004:5). According to Cavanaugh et al. (2004), in the early 1930s distance education via the use of radio was brought into schools in order to bring courses to students and to help teachers learn the progressive Deweyan methods of teaching. Later, television, audio and video-conferencing, the Internet, and other technologies were adapted in order to meet the needs of diverse learners.

Nasseh (1997) argues, that because of the political and social changes in women’s position within the family and society, women’s participation in distance learning increased immensely in the United States during the 1980s and 1990s. Other contributing factors were technological advances in the workplace, and the necessity of women’s contribution in the job market. Sixty-seven percent of all participants in distance education during that time were women.

Televised distance programs are still available to students in many areas of the world. Students can watch classes via live broadcast through local cable stations. In most cases student will have a direct hot-line number into the classroom and can pose a comment or question to the instructor for the entire class to hear. The exams can be proctored and the assignments must later be sent in via mail, or e-mail. A great advantage is that the student can videotape the lecture for later. Some colleges will even tape each

lecture and provide them to the student to watch in a designated area on campus. With this method, the students get freedom of scheduling and some live interaction.

According to Keegan (2005), CSU Chico, a provider of distance education over the last thirty years, provided satellite service throughout the 1990s. For example, this service was also available at College of the Redwoods, Del Norte campus in California. Students used to be able take classes taught at the California State University Chico (CSU Chico) by sitting in a small room and watching a television hooked up to a satellite. These classes were synchronous and the student could pick up a telephone provided in the room and pose questions to the instructor and the class. The students would do their assignments after the lecture and either e-mail, or mail them in via United States Postal Service (USPS), them to the professors at CSU Chico. These satellite courses were offered during CSU Chico's class time and the students had to be present in order to view and participate in the class. Using this kind of delivery, the students were able to interact live with the instructor and the other students, but did not have scheduling freedom.

Pollock (2002) explains that the field of distance education was already mature when the Internet became public. Correspondence, audio-only, and audio-visual sub-fields of distance education had developed due to technological advances, but were constrained by the limits of those very media. The limits no longer existed with the introduction of the Internet, which resulted in a drastic restructuring of the distance education field. Now, via the Internet, distance education bridged the gap and courses could be offered on either a synchronous or asynchronous basis.

Keegan (2005) points out that in 1998, CSU Chico started investing funds into exploring ways it could offer its satellite-based classes over the Internet. By 2001, CSU Chico's delivery format was upgraded to a combination of live and on-demand web-based systems, with the technological combination of WebCT and Horizon Wimba. WebCT is an online management software that provides instructors and students with the ability to create, manage, organize and house a web-based learning environment. Horizon Wimba is a tool that allows for courses to be enhanced with synchronous and asynchronous voice and video recording. It also provides live audio discussions between students and between students and teachers. The biggest advantage of WebCT and Horizon Wimba is that faculty and students have around the clock access. "The combination of these two technological systems resulted in the marriage of the best live and self-study tools rolled into one web-based solution" (Keegan 2005:129). With the help of this technology, instructors were able to help establish a sense of community between themselves, the students in the classroom, and the distant students. The added benefit of Horizon Wimba is that it retains many of the same elements of a face-to-face classroom, by offering a live video streaming component for the students.

Basically, the students could log into a live, face-to-face classroom through the CSU Chico website and observe and interact with the class on a live basis because of the streaming video. One advantage of this method is that the students can type their input and questions into a live scroll, which is monitored by a technical teaching assistant. If necessary, students had the choice to log on later (asynchronous) at their own convenience and watch the class. They can also watch a lecture as often as they like, and

wherever they like. This can all be done from the comfort of their own homes in their PJ's if they so wish. The students can pause, rewind, fast-forward, stop, or whatever they wish to do with ease.

As Desmond Keegan (2005) points out, CSU Chico has successfully delivered over 200 live courses since 2001 with the participation of over 100 instructors and over 1000 students. CSU Chico currently offers two Masters of Science and four Bachelors degrees, in addition to two minors and two certificates through distance education.

Online education has come from the interaction between computer and student to advanced interaction between student and instructor--mediated by computer technology. This kind of technology offers the students the best of both worlds— asynchronous and/or synchronous learning. Now a student receives real-time interaction with the other students and the instructor and the freedom of scheduling.

Clearly, distance education is nothing new and online education is a natural progression of the distance paradigm. Despite this natural progression, many professors still feel uncertain and uneasy about online education. Instructors are worried about issues such as the quality of the education, and the student learning-outcome. According to The Sloan Consortium (a consortium of institutions and organizations committed to quality online education), “faculty is perceived as lagging in acceptance of online education” (Allen and Seaman 2006:14).

According to Schrum (2002), the advancement of any educational situation is a multifaceted task. Moreover, when it comes to changing teaching methods, faculty members have had an especially difficult time adjusting to the online milieu. Teaching

online classes requires more than just getting familiar with technology. The new technology challenges instructors to design activities and interactions in new ways, while they are urged to move toward offering a deeper learning experience.

Educators are seeking empirical research to address the specific issues of quality in online education and student learning outcome. The value of new research includes new ideas about what works and what does not, and the sum effect is that online education gains legitimacy. Fortunately, there is plenty of current literature that addresses these concerns, because many academics are trying to understand “this new portion of the educational landscape” (Dutton, Dutton, and Perry 2002:18).

Review Of The Literature Addressing Learning Outcomes

In the recent years, a body of literature has begun to emerge addressing the nature of online learning. Garrison, Cleveland-Innes, and Fung (2004) bring up a very interesting point by examining the adjustment in student roles online education presents. In order for a student to be a functioning member of an online learning environment, an online learner role is both independent and interdependent. Participants of online education “...must move from a relatively passive classroom experience into a more active online community of inquiry” (Garrison et al. 2004:63). The student needs to privately reflect and process the course material, as well as interact with the instructor and the other students. More responsibility is placed on the student for more of the learning process—autonomy is essential. This represents higher standards that more closely match those of “real” life outside the classroom. “Educationally, this is a considerable advantage as

students must become more self-directed and learn to learn” (Garrison et al. 2004:64).

French, Hale, Johnson, and Farr (1999) point out as well that self-directed learning is a strong asset business companies look for when hiring. Students will acquire this particular skill when taking classes online.

“A primary characteristic that sets successful distance learning apart from classroom-based counterparts is their autonomy” (Cavenough et al. 2004:6).

Interestingly, Cavenough et al. (2004) argue that distance education needs to be integrated into the K-12 curriculum delivery format in order for younger students to learn the valuable skill of autonomous learning. Autonomous learning is an important skill for children to acquire in order to be successful independent learners later on. The authors report that out of the two thousand charter schools nationwide, over one hundred of them are now virtual (Cavenough et al 2004). Their synthesis included data from ten virtual charter schools. All ten of these virtual charter schools performed at the same levels as the non-virtual, non-charter public schools in their states. They point out that according to the National Assessment of Education Progress, traditional charter schools overall underperform when compared to non-charter public schools. Based on their meta-analysis study, Cavenough et al.’s (2004) conclude that:

...When compared to traditional instruction, ...no factors were found to be related to significant positive or negative effects. Students can experience similar academic success. ...A student’s education online can be as effective as it is in the classroom...(p.21)

Cavenough et al. (2004) argue that with the autonomous learning skill online education could be as effective as face-to-face education. They based this conclusion on their

extensive literature review, and a synthesis of fourteen empirical studies published in reputable journals since 1999.

According to Garrison et al. (2004) and Cavenough et al. (2004), online learning requires the students to have certain skills in order to succeed in an online environment. Both of these studies emphasize also that autonomous learning is essential. The best way to master this skill is by letting it become “second nature” as early in life as possible. In many western nations, a large proportion of children born since the 1980s, are already raised with interactive video and computer games. Through playing these games, children learn how to operate computers before they even enter kindergarten. The few that have not been exposed to computers by the time they enter school will have plenty of time to catch up once they start school. By the time children reach their teens, electronic interactivity is second nature to them. Field (2003) predicts that the interactive nature of online education will be a perfect fit for young minds that have been raised in a world of interactive games and multimedia simulations.

Meyer (2003) comments in her review article, that the interesting development along generational lines is that students arriving at colleges now have greater abilities in online learning and the expectation to learn that way.

Moving away from education from K-12 and examining higher education specifically, Eva Schwencke (2005) claims that the learning result, just as with traditional face-to-face classroom learning, is in direct correlation to active student participation. In order for students to achieve the highest possible student-learning outcome, emphasis must be given to pedagogical principles that address this. One very important aspect of

this is the student's active involvement in the learning process. "...[B]y design, the success of many online courses is dependent upon the nature of student to student and student to faculty interaction" (Picciano 2002:33).

Schwencke (2005) points out that getting students to actively participate is always a challenge, whether the classroom setting is face-to-face or virtual. She argues that in order for students to learn the material, they must both listen, and actively participate. Schwencke outlines the distinction between two general theories of education, namely the behaviorist (active/passive) and the constructivist (active/active) approaches.

According to Schwencke (2005), the behaviorist approach focuses on learning being based on the teacher's presentation and the student having to do the memorizing. Performed tasks are based on comprehensive instructions and repetition. The students are frequently required to take short tests encompassing the material and in return receive prompt positive feedback. This method yields short-term confirmable results for the students because it focuses on the learning result at any given time. The method is based on an active/passive process between the teacher and the student.

The constructivist approach, on the other hand, requires active and meaningful participation from the students. The lecture component delivered by the teacher is an important part for the student's knowledge formation. The students are given ample opportunity to discuss questions with other students and apply their reasoning to find answers and reflect on the subject matter. The role of the instructor is to facilitate and guide such discussions so that the students are partaking in a meaningful way in the teaching situation themselves. This kind of approach challenges the traditional roles of

instructor and student and promotes an active/active process between the teacher and the student.

Schwencke's (2005) main point is that, just as with conventional classes, online classes can be approached in different ways that make the learning experience for the student either passive (lacking in interaction and collaboration) or active (collaborative, informative, and offering a high level of interaction). It is up to the instructor to create a stimulating active learning environment regardless of the delivery format used.

Schwencke (2005) argues that there must be an emphasis on interactivity, which can be achieved by offering breakout rooms, video, text chat, application sharing, and web exploration assignments to the students. Schwencke (2005) stresses that the emphasis of any learning environment—virtual or face-to-face—must be based on pedagogical principles that enhance the student-learning outcome by actively involving them in the learning process.

Two political science professors, Carol S. Botsch and Robert E. Botsch (2001), conducted a study comparing face-to-face classes to online classes for the same American Government class over a two-year period. The two instructors found that the mode of instruction made little difference in the students' learning outcome. There were no significant differences between the two delivery formats on retention or student grades with the exception of the factual knowledge gain in lower Grade Point Average (GPA) students. The lower GPA online students gained slightly more factual knowledge than their counterparts, the lower GPA face-to-face students. Botsch and Botsch (2001) concluded that this happened because the online students were forced to engage with the

material on their own, while the face-to-face students could depend on the traditional lectures alone. There was more active participation required from the online students than from the traditional classroom students who were only required to passively listen to the lectures. Botsch and Botsch's (2001) argument parallels Schwencke's (2005) point about the importance of actively involving the students in the learning process.

Duffy and Kirkley (2004) also claim that educational quality does not depend on the delivery mode but rather on learning design and learner engagement. As measured by faculty, online education is "right in the mix with all other courses in the dimension of quality" (Duffy and Kirkley 2004:4). They point out that little, if any, research evidence supports the claims of the online education opponents that traditional classroom learning is superior.

Abel's (2005) findings were based on the responses of online students who participated in learning institutions. Fifty-nine percent perceived the online courses to be successful and "of higher quality due to the e-Learning initiative" (Abel 2005:24). Fifty-four percent "felt that they had revolutionized the teaching process" (Abel 2005:24). Most significant was the finding that sixty-eight percent reported that online courses provide learners with the capability to be more contributory in the learning process itself.

All five studies mentioned above, Abel's (2005), Botch and Botch's (2001), Duffy and Kirkley's (2004), Schwencke's (2005), and Picciano's (2003), agree that it is essential to enhance the student-learning outcome by actively involving students in the learning process.

Another interesting fact, pointed out by Duffy and Kirkley (2004), is that distance education has prompted educators to pay more attention to the quality of pedagogical approaches in traditional classrooms as well as on the web. However, much more scrutiny is focused on distance education programs than face-to-face ones. Institutions that offer online classes are concerned about assessing and comparing their programs nationally and even internationally. Institutions can learn from each other's success and failures. Kay Kayne (2004), the Quality Matters Project coordinator of the *Sloan-C View* journal (a publication of the Sloan Consortium), examines how to assess quality in online education in her "Quality Matters: Inter-Institutional Quality Assurance in Online Learning" article. She points out that "quality is much like recognizing art – you know it when you see it, but everybody sees something different" (Kayne 2004:1). Because quality is such an abstract concept, the Quality Matters Project has identified forty elements of online learning that impact student learning positively in order to promote inter-institutional quality improvement. Composed of these forty elements, is a new web-based rubric that is used by trained faculty teaching online courses.

Abel (2005), in conjunction with The Alliance for Higher Education Competitiveness, did a comprehensive quantitative study using surveys and interviews on the students and faculty of "twenty-one higher education institutions of various types that consider their usage of e-Learning as successful" (Abel 2005:iii). He looked at how achieving success in internet-supported learning in higher education was achieved. His "case studies illuminate success factors, challenges, and future direction" (Abel 2005:iii). Abel (2005) compared student outcomes by measuring retention and the level of quality

ascertained through the student interviews. Students agreed that they are at least as satisfied with online courses as they are with traditional face-to-face courses.

A pilot study conducted by Julio C. Rivera, Khris McAlister, and Margaret L. Rice (2002) at the University of Alabama at Birmingham concluded that the problem is not student performance and learning outcome, but rather student satisfaction. This study compared one class delivered in three different formats. First there was the traditional face-to-face lecture/discussion format. Second there was the web-based format, which was offered almost exclusively on the web, and the third format was the hybrid combining a mix of traditional and web-based means. All three formats assigned similar assignments, used the same text and the same test bank tests in order to allow for direct comparison. Two professors taught the three sections studied. The student performance was remarkably consistent across the three delivery formats, and the students' learning outcomes were almost identical; there was no significant change in the learning-outcome. However, there was a significant change in how the students perceived the classes within the three different formats. Riviera and Rice (2002) felt that while their study should lay to rest the fears of diminished student learning outcome for online delivery format, academics should conduct more research trying to find out why online students, even though they tested equally as well, felt less satisfied with their class experience in general.

Concerned also with the issue of student satisfaction, Picciano (2002) conducted a study addressing the assumption that there is a significant correlation between the student's perception of satisfaction and student's actual performance and learning-

outcome. Interestingly, his study did not come to a clear conclusion that would support the assumed correlation between the two factors because the results were mixed and inconsistent. Picciano's (2002) recommendation was to further study this complex pedagogical phenomenon.

Koory (2003), a professor at the University of California Berkeley taught "An Introduction to Shakespeare" simultaneously in the traditional face-to-face on campus format as well as in the online format. She conducted a comparison study based on these two sections of her class. Here again, as with the Riviera et al. (2002) study, the course objectives, assignments, and exams were basically the same in both course format deliveries. However, in Koory's study, the same instructor taught the two sections—no variations in instructor. Koory's (2003) findings, contradict Riviera et al.'s (2002) conclusions, as the sections taught by Koory received equally positive student satisfaction. An additional contradiction was that the online learners in Koory's online course achieved dramatically higher overall scores than the face-to-face students. Fifteen percent of Koory's face-to-face students received an A or an A-, compared to fifty-eight percent in her online class, whereby the online students in Riviera et al.'s (2002) study performed the same as their face-to-face counterparts.

Koory (2003) offers several explanations for this drastic difference. To begin with, her online students were a self-selected group, plus less than half of the enrolled students actually finished the online course. Over half the online students lacked the motivation and ability to do well in her course and therefore dropped out early on. Wojciechowski (2005) also concludes that a higher percentage of online students drop

courses—“online education is plagued by high dropout rates...” (p.2). The face-to-face students were neither self-selected nor had an attrition problem, because “the traditional undergraduate environment supports a high rate of completion regardless of performance” (Koory 2003:31). Another important factor is that the online format allows for a self-paced learning, while the traditional format does not, and communication with the instructor is requisite in the online course, while it is optional in the classroom. The verbal communications in face-to-face classes are often times less substantive and more ephemeral, because no written composed responses are required for either the student or the instructor.

Koory (2003) argues that while campus students spend more actual time in class than their online counterparts do, the comprehension level does not suffer. The “entertainment value” of an actual in-class lecture is supplemented by the “reference value” that is continuously available for the student’s review and reflection. In addition, the time spent by online students engaging with the material is focused, compared to the face-to-face students who may frequently be lured off topic by trivial non-issue contributions. The discussion requirement for all online students was to post messages for others to see and respond to. While face-to-face discussions may be momentarily more entertaining and emotionally satisfying, they are defined by a lower standard of discourse and allow many students to remain silent. Koory (2003) concludes that ultimately the difference between the online and face-to-face classrooms is, that the online environment “supports student’s abilities to practice adult learning styles” (p.33).

Dutton, Dutton, and Perry (2002) conducted a similar study comparing students of two large sections in a course that was offered in the traditional lecture style format and the newer online format. While the main objective of the study was to find out how online students differ from traditional students, they also explored student performance differences. While they did identify significant differences in the characteristics of the students themselves, they concluded that none of these differences influenced the student learning-outcome significantly at all. Most importantly, while their findings confirm that online students perform slightly better on exams, and that their course grades on average are slightly higher than those of face-to-face counterparts; none of these performance differences were statistically significant.

Summary Findings About Online Education

Thus far, I have attempted provide a short history of online education and an extensive review of the current literature. I also explored what it takes to be a successful online student, and how a strictly online learning environment affects the student-learning outcome when compared to conventional face-to-face classes.

According to the literature reviewed, autonomous learning is an essential skill an online student must master in order to perform well in an online environment. Fortunately, most of the younger generation students entering higher education institutions have been raised in a world of interactive games and multimedia simulations; the autonomous electronic interactivity of an online learning environment is like second nature to them.

Experts agree that the best learning outcomes come from an active learning experience regardless of the delivery format. Therefore, instructors are working towards providing an online learning environment that requires the student to be actively involved.

The issue of student satisfaction still needs further research. This literature review includes articles with opposing conclusions on how satisfied students are with online classes. The levels of student satisfaction range from being more satisfied with online classes, to equally satisfied with online classes, to less satisfied with online classes when compared to face-to-face classes. Despite the different levels of student satisfaction, online students that actually finished a course either performed as well or even outperformed their in-class counterparts by comparison. There was no correlation between student satisfaction and student performance. However, further examination is needed in order to establish the (what seems to be an obvious) correlation between student satisfaction and the high dropout rates in online courses.

The teaching process has undergone a huge transformation over the past seventy years. We have come from an in-class-lectures/everything on paper only format, to adding an online/distance/paperless format to the former, in order to accommodate the changing needs of our students. Changes in our education system have also been financial in nature, “education in the twenty-first century is a billion dollar business and in a capitalist economy it is understandable that the corporations will subsidize Internet education to a large degree” (Keefer 1998:10). Online education has become a prime commodity and public institutions are in direct competition with private ones springing

up everywhere trying to get a piece of the pie. Since many investors are concerned about returns on their investment, and since many public colleges are concerned about meeting recruitment goals, online education is here to stay and grow—regardless of the concerns and level of comfort faculty have with this medium. If public schools continue to lag, private schools will happily pick up the slack. All we can do now is try to improve online education, by conducting more research and expanding our knowledge about this fairly new development that is sweeping across developed nations.

Clawson, Dean and Oxley (2002) argue, as more technological innovations are used in online courses, more research is needed in order to evaluate their pedagogical effectiveness. While pedagogical issues of online education are examined, even face-to-face education can benefit from the research. The quality of education in general can be improved by bringing forth the concerns of online education.

CHAPTER TWO: METHODS

First I wanted to find out how experienced mediator trainers felt about having mediation training on line. My choice of method and the consequent formulation of the questions arose through my literature review. I realized while writing my literature review that, whereas the topic of online education in general is popular and plentiful, the more narrowed topic of conducting online mediation training for people that want to become mediators is fairly limited to non-existent. This is because online education in areas of practical training is a somewhat new phenomenon. When conducting an online search on “online mediation training” one can find dozens of institutions offering such opportunities. Many of them even offer a certificate of mediation after the completion and full payment of the course. However, finding academic articles about this is virtually impossible. Academics have not had enough time to study and publish on the subject of training mediators online. I came to the conclusion that I had to conduct my own original research. I felt the best way to approach this would be by interviewing the experts in the specific field of training mediators.

I found the initial interviewees by asking Dr. Watson, the co-director of the Institute for Study of Alternative Dispute Resolution (ISADR) if she knew of any people I could interview. She told me to start with our mediator trainers that we use here at ISADR. Consequently, I contacted all our mediator instructors via an initial email to find out if they would be interested in being interviewed over the telephone. See Appendix A.

I originally asked the ISADR mediator trainers Dr. Susan Carpenter, John Gromala, Larry Hoover, Professor Margaret Kelso, Dr. Tasha Souza, Jon Townsend, and Dr. Elizabeth Watson if they could participate in the interviews. All of them agreed, and some of them even gave me additional names and contact information for other mediator trainers. Consequently I also sent, David Booher, Ron Kelly, John Kinyon, Ike Lasater, and Marco Rotting the above email. All of them agreed to be interviewed as well. Upon further recommendations, I also conducted interviews with Dr. Anthony Kontos and Dr. Sue MacConnie. All but three of my fourteen interviewees are professional mediator trainers. For a short biography of these interviewees see Appendix C.

After I finished formulating all my questions, I sent out my second email to all the people that responded that they would be willing to be interviewed. See Appendix B. My interview questions were designed to elicit the interviewees' viewpoint of my overarching question, if he or she thought that mediation training could be done effectively online. The questions permitted for a loosely flowing interview experience, allowing the interviewees to interject information as they thought of it. The average length of the interviews was fifteen minutes.

I asked the interviewees the following initial question: Do you think online mediation training could be done effectively? If the answer to the initial question was no, I asked the following questions:

--Why do you think it could not be done effectively in online environment? I want to find out why you think mediation should be learned in a face-to-face learning environment.

What is lacking in an online learning environment that would hinder the training of successful mediators?

--Do you think that online education could be used to enhance the training of mediators?

If the answer is yes to that, what components of the training might be enhanced by online education and why?

If the answer to the initial question was yes, I asked the following questions:

--Do you think there is anything that could not be taught online, or can the entire training can be done online? How does a mediator instructor teach non-verbal communication online?

--Would you want to utilize video-tapes, or live video streaming in order to teach non-verbal communication and the mediator's presentation of the self?

Once I was finished interviewing and recording all the fourteen interviews, I had them transcribed by an HSU student in my presence. I instructed her to write down everything, including laughter, pauses, "umm" and "ahs." After I printed out the completed transcripts, double-spaced and with wide margins in order to allow for ample space for the "memoing" and coding process, I read them in one sitting. I chose to do the analysis by hand with various color highlighters, pencils, scissors, and tape. While doing this process by hand may not be technologically sophisticated, I still find it to be the most rapid and effective method for small qualitative projects like this one. With my second reading of the transcripts, I started the "memoing" method. By that time, I was very familiar with the data; I had listened to the interviews twice already and was on my second reading of them. The initial coding was achieved by "memoing" "labels/tags" in

the margins for assigning units of meaning. The third time through the reading, I used different color highlighters for further coding in order to organize ideas.

After the color-coding was completed, it was easy to use scissors and cut out the sections of the interviews that dealt with the same topics. I put them in different piles read them once again and composed a document summarizing each topic pile. Within this summary I included key-quotes of the interviewees in order to illuminate the most important points of the topic. I ended up with four distinct summaries from the piles dealing with “direct interaction/body language/real time,” “content-driven materials,” “technological barriers/shortcomings,” and “online enhance/adjunct potential.” For the purpose of this thesis, I only use the information “direct interaction/body language/real time,” and “content-driven materials” within my analysis.

CHAPTER THREE: INTERVIEW ANALYSIS

The fourteen interviewees' answers have many things in common. If all fourteen of them had been in the same room, they would have been pretty much in agreement with each other. First off they all answered "yes" and "no" to the question if mediation could be taught successfully online. Yes, because they felt that the content-driven parts of mediation could be successfully taught online, and no, because they felt that the "core training" of mediation could not be taught online without sacrificing the quality of the training. Within this analysis, I will examine the parts of the mediation training these experts felt could be learned in an online environment successfully. Then, I will present the more complex answers to what the interviewees identified as the "core training" components of mediation and why they felt it could not be taught successfully online.

Ron Kelly pointed out that, "the parts of mediation training that are equivalent to simply sitting and watching someone in front of the room talk, or watching a video, or reading material...written materials...you could certainly do online. You can read online as well as in a book...those can all be done well and possibly even better online."

Larry Hoover also described that people can basically learn online what they can read in books and what they would be studying at home to prepare for tests, such as "basic information where you are absorbing bodies of knowledge." Trying to do anything beyond that, he felt, "is absolutely dangerous," because it seems to give people a false sense of "empowerment."

John Gromala cautiously argued, that “some parts of mediation training might be done online...it is probably better than nothing, but it certainly can not be done as effectively then going in there and actually teaching people how to mediate.”

David Booher explained that, “online information could be used to supplement face-to-face processes,” and also “in conjunction” with it. He explained that the students that way would have the ability to negotiate and dissect the information at their own pace. John Kinyon explained that through online education a fair amount of knowledge can be learned, and that it can offer “an interesting kind of adjunct.”

Dr. Susan Carpenter explained that online education is, “a great way to develop some basic understanding of what the field, and its basic skills are all about. She pointed out that, “online education has a lot more options than we have explored,” and that at one point in the future she would “like to see a whole list...of online courses that somebody could download for very little money.” She felt that it will not be long until online education will go beyond the verbal text and will be enhanced by live video streaming and interactive opportunities. Such venues could be utilized for additional training, in addition to the core live face-to-face component, and for refresher courses. In short, Dr. Carpenter felt that online education has “tremendous potential beyond what currently exists, but [the students] will always need that component of real time” practice.

Professor Margaret Kelso echoed with her comment, “I think there are some elements that could be taught very well online...in terms of theory work that makes a lot of sense...and I imagine there are some presentation of certain skills that can be done online if you use video and other kinds of interactive work.”

Dr. Tasha Souza claimed that “the different theoretical perspectives of mediation...[are] appropriate to do as an online component[s].” She explained “that some courses could have a component that is expected for background knowledge prior to the actual face-to-face interaction.” It would be helpful to offer online learning units, which could be offered before the week-long face-to-face interaction and practice courses. In short, Dr. Souza felt that online components could be offered in addition to face-to-face courses and that she “could see where there can be more online instruction integrated...in order to enhance people’s content knowledge.”

Jon Townsend felt that only “very limited and certain situations” could be taught online. “Once people have had a very solid core [knowledge] of mediation...advanced kinds of training can be offered [online] which would be useful because people can anchor back to their experiential learning. He felt that out of a forty hour course, one “can probably get away with a good eight hours of training that would be interactive over the wire.”

Marco Rotting felt that online mediation training could be successful, as long as the students would still have to complete an extensive practicum period.

Dr. Elizabeth Watson pointed out that, “as much as fifty percent of the training can be done online, because there are a lot of things that have to be explained when you teach someone how to mediate. Background training can be done online, both before and after the real-time training.” She told me that she is convinced that it is time to “move more and more toward enhancing” the current face-to-face courses with online education components, but that she “would not be willing to replace” real time training.

Ike Lasater is “warming to the idea” of supplementing some portions of mediation training with online components. However, he points out that “the core or central piece” of the training cannot be done online effectively. Lasater explained, “I could not imagine teaching the core skill of what I want people to learn—how to analyze the conflict into a flowing, useful conversation connection.” He said that sometimes there is a creation of a “gray area” which is generated by emotion. People sometimes enter mediation after they have been deeply hurt by the other party—they used to have a connection, which has been damaged somehow and “there is something that we humans do not really understand yet about this connection that we make with each other. It’s important to us, or something like it, and I do not think we fully understand it. I am just trying to identify that it is there.” Lasater also explained that it also has to do with, “micro movements of the body—body language..., but not just the movements of the body, but the pace in which you move..., poise, breathing..., tone of voice, pacing of the voice, pressure of speech, and the eyes.” He also pointed out that, different parts of the world or even parts of the United States, have “its own rhythm.” He elaborated that if you get an “East coast and West coast rhythm together” in the same room, “people have to learn how to get “in sync” with each other.” Lasater pointed out that this is a real phenomenon, and that it affects the “ambiance—the feel” of the mediation proceedings.

The second half of my analysis addresses what the interviewees like Ike Lasater call the “core training” or “central piece” of the mediation training they provide, and why they think it cannot be done successfully via a strictly online medium. Many of the interviewees also used metaphors to explain this essential portion of the training.

Ron Kelly does not believe that online training without this “core training” could prepare a person to walk into a room and deal with angry distrustful people. He believes that role-plays and simulations are essential in training good mediators. Kelly explained this by using team sports as a metaphor, “you can learn an awful lot about the rules of a game like football, baseball, or basketball. You can study a lot of strategies, but that is really different than being in the moment and having to react to a lot of very fast moving situations.” Kelly argued that, the art of mediation and, “direct conversation between people who are face-to-face in the same location...needs to be practiced. The same way a doctor would have to practice on real patient and do a residency by seeing real patients with supervision.” He compared mediation to “examining a patient...doing an interview with a patient, which is not unlike what happens in mediation where you are monitoring the body language of the participants.” Kelly felt very strongly that a mediator in training needs hands-on face-to-face training in order to become a competent mediator.

Dr. Anthony Kontos pointed out the components of the “unspoken language,” and how one could not teach this skill online. He used the metaphor of studying to become an attorney. “Just understanding the law and theories of applying the law is not the problem,” however, “when it actually comes to performing in a court room, performing some sort of action like depositioning a witness, ...actual one-on-one skills,...that is when it starts to break down on an internet level.” Most importantly, “dealing with people in person is quite different than dealing with them theoretically.” He concluded by saying, that professionals who enroll in online classes have two things in mind, “spending as little time as possible,” and “obtaining skills that are highly relevant.” He pointed out

that, “if you want to do it fast, you can certainly use the Internet,” but, “if you want to do it well, can you use the Internet?” Dr. Kontos pointed out that the main question is if one “can effectively meet the needs of what you do in a classroom. It is easy to do stuff in theory, but can you do it when it really counts? There are certainly some... needs and objectives you might not be able to meet very easily online...and some that you will not be able to meet [at all].”

Jon Townsend felt that online training is situational, very limited in its use, and only effective in certain types of situations. He emphasized that regardless of the sophisticated technology available today, “there is nothing quite like role playing to really capture the emotions, closeness, feel, and intensity that differentiates [face-to-face training] from the streaming video clip or interactive session where perhaps the trainer is thousands of miles a way.” One might think about “virtual reality,” and even if online training was offered through such a medium, “the name in itself provides its weakness. The reality is virtual, however, mediation is...working with real people and real time—real life. The idea of training outside of that reality is interesting, and almost anticipative.” Virtual reality filters out and narrows the actual reality, because “there is something about real people, in a real room, with a real instructor who is at arm’s reach,” that would put “a different feel to it.” Mediation “is not a science, and it is very interactive and very experiential. Those are hard things to capture over the screen, no matter how flat or how big it is.”

Larry Hoover claimed that online mediation training is “absolutely dangerous,” because “every time you are out of a classroom setting you miss...interaction from the

students, ...insightful and critical comments, ...and the interactive process that adds to the learning.” Hoover strongly felt that those are all critical components that “online learning completely misses.” Hoover told me about a negative experience he had with a mediator who was solely trained online.” The outcome was “catastrophic,” because she missed out on immediate “feed back...after interacting with other human beings.” Hoover pointed out that she was not able to truly “evaluate what was going on,” because she “did not get the drills” during her training. He explained that one has “to practice techniques” in order to become a competed mediator. Many of the skills a mediator has to learn are, “listening, the ability to read body language, the notion of the need to shift gears, the games that are played by the individual people sitting across from you, the weirdness of your co-mediators you are working with,” and being able to deal with “so many variables going on” during a mediation. In short, Hoover strongly felt that in general online mediation would sacrifice the quality of the training.

Dr. Susan Carpenter was also very concerned with the quality of mediation training. She felt that there has to be some kind of “quality control and being really clear about what it is you are trying to teach in a course...making sure you are able to convey and engage a person, so they are picking up what it is” you are trying to teach them. Carpenter explained, “Frankly, I do not think there is a huge amount of training that could be done online...some of the skill-building could be done online, but I would want a person to practice skills.” She used the following analogy; “it is like trying to learn the piano without using your fingers.” One can practice the piano in theory all they want, but “some day you do need some ways to practice the physical” skill of it.

Another way Dr. Carpenter explained it is by comparing mediation training to learning how to ski, “you can show all the tapes you want and teach all the theory, but at some point you have to put those skis on and do it.” However, no other analogy affected me more than when she explained that, “mediation in so many ways is like the medical field, where a good doctor is somebody that...takes two years of classroom instruction before they touch bodies.” Even a surgeon has to first learn about the theory of medicine and surgery, before he/she gets to cut into his/her first patient. However, it is important to understand that specific experiences offered in a face-to face mediation course are the substance of the training; “theory always has to be grounded in specific experiences, and a good mediator needs to know that substance.” Therefore, after all the theory, which online education can provide, “a student of mediation does need at some point to have the practicum where they actually have an opportunity to practice a skill and get feed-back from an experienced person.”

Marco Rotting echoed the notion of a practicum being one of the essential core components of training mediators. He felt that, “the quality of an education would be diminished” if it was only done online. While he did believe that certain aspects of the mediation training could be successfully offered online, Rotting insisted that a certificate of completion should not be given to student till they also completed a practicum.

John Gromala commented on why he has “serious doubts” that a purely online education program is effective by saying, “well, because mediation is an art, not a science. The whole concept of mediation is to help people communicate because of conflict.” Within his many years of mediation experience he noticed that, “people are

coming up with assumptions that are unwarranted and perceptions that are unwarranted, and that is the human aspect.” This is why Gromala believes that, “a mediator needs to interact with successful mediator in training to get the feel of what goes on...a lot of mediation is ‘by the seat of your pants,’ and you can not teach ‘by the seat of your pants’” via online education. He even feels that online programs that use video are “counterproductive, because...when people are being videotaped they act differently then they do in person. It is a more guarded type of atmosphere...it is not as spontaneous as it would be person-to-person.” He felt that a purely online program would not be as good as the conventional face-to-face programs. In concluding the interview, he stated, “I cannot see a person with only online training going into a mediation conference and being able to handle that mediation conference very well.”

Professor Margaret Kelso, just like John Gromala, stated that mediation is an art not a science. That is why certain elements can be taught online, but “there comes a point in the training where people really need to be actively involved, really testing themselves and applying their skills and knowledge in a classroom format where they can get coaching feedback.” Mediation, just as mediation training should be as well, is “a corporal way; our body with other bodies, so you can take in live when they are doing something—when they are practicing the art.” Kelso sees the potential for enhancing a mediation program, but would feel “uncomfortable with a program that totally relies on an online format. She concluded by saying, “I would question, really wonder, if the people that come out of that were really prepared to begin mediating with real live people.”

John Kinyon stated that, while he finds online education an “interesting kind of adjunct,” he “would not have any confidence that people would learn enough about real mediation with real people in real time.” Online training “would not carry over enough of the actual...live interaction with people,” because “there is definitely more to be learned in person than on audio” or online. “It just would not be the same kind of learning [outcome] as when you are” taking a face-to-face course.

Dr. Tasha Souza, one of the co-directors of ISDR, also felt little confidence in a strictly online mediation training program. She said, “I do not think someone can walk away from an online course of mediation and feel confident as a mediator...I think that things that need to be done face-to-face need to be [learned] face-to-face.” She confirmed that the Theory and Methods of Alternative Dispute Resolution course offered by ISADR “is appropriate to do as an online component,” because “you learn about the different theoretical perspectives of mediation and look for structures of it.” Mediation training is about teaching “all forms of communication.... Hands-on communication skill ...is the key to face-to-face communication in action.” Dr. Souza felt that online mediation training can only be successful when offered in addition to face-to-face courses—“not in lieu of.”

Dr. MacConnie explained the aspects of communications as well. She elaborated by telling me that being a good mediator meant being a good listener, which in turn means not just listening to the words being spoken, but also watching your clients’ eyes and body language. She stated that the “non-verbal cues” are just as important as the verbal ones and that “the actual interaction of people...more or less the flowing with the

discussions as it happens...being able to be nimble enough to what they are saying, and to ask follow up questions,” would be very challenging to teach someone online. Because of those reasons she felt that at least “a small portion of the training...an intensive on campus experience” should be live.

David Booher argued right at the beginning of the interview that mediation training just like the mediation process itself “requires face-to-face contact to be successful.” He felt that certain components within the training such as “body language and just the dynamic of being face-to-face with someone,” an online format would “distort the process of interacting” and the learning outcome of it. “Coming to understand each other’s points of view” and understanding the different meanings that people have requires face-to-face training.

CHAPTER FOUR: THE EVALUATION AND REDESIGN OF THE ONLINE “THEORIES & METHODS OF ALTERNATIVE DISPUTE RESOLUTION COURSE”

The co-directors and staff of ISADR strongly believe in the quality of their program, and adhere to the highest standards in the field of alternative dispute resolution. This study was conducted because the co-directors and staff of ISADR want to remain current and up to date and are open to suggestions that add to the quality. ISADR is not willing to go with the current trend of offering its entire program online, for it would sacrifice its quality.

ISADR strives to adhere to, and even excel beyond, the standards the Association for Conflict Resolution (ACR). Within their guidelines of “Ethical Standards of Professional Responsibility (see Appendix J),” the background qualifications of a mediator are to encompass, “sufficient knowledge regarding the appropriate process and subject matter.” A mediator also “has the responsibility to maintain and improve his or her professional skills.” An experienced mediator “should also participate in the development of new practitioners in the field...” This ethical standard and professional responsibility translates into offering courses with hands-on mentored experiences.

Based on the analysis of these interviews I infer that an online course, covering the theories and methods of mediation, within a complete mediation program is a good idea as long as the other courses offer hands-on practice and experience. The way the current Theories & Methods of Alternative Dispute Resolution course is placed within our program is ideal. The course is designed to be taken after our interactive Introduction to

Alternative Dispute Resolution course, which is taught face-to-face and offers many hours of hands-on training supervised by coaches and instructors providing immediate feedback. By the time the mediator in training is entering our online Theories & Methods course he or she will have practical skills to refer back to while being guided through the case studies. The students in this course learn about the nature and characteristics of social conflict, the basics of the competing theories of conflict resolution, various negotiations practices, and the implications of ethics. Students learn how to assess contemporary conflicts, prepare cases for mediation, design agendas for interest-based negotiations, and develop mutual to agreements satisfactory to everyone involved in the mediation. Most importantly, the students come to the realization that self-reflection is the key to success when mediating.

Equipped with this theoretical base knowledge, the mediator in training, wanting to attain a certificate in mediation, will pick from one of our interactive courses at the higher level. At this level, the student will decide what they want to specialize in. Within our program, they can choose between Public Policy Mediation, Mediating Workplace Disputes, and Family and Interpersonal Mediation. In order to receive the Mediation Training Certificate, the mediator in training has to complete a sixty-hour practicum. Here is where the student has the opportunity to gain experience while applying their new knowledge under the supervision of an experienced mediator.

In order to get the Mediation Training Certificate from the Institute for Study of Alternative Dispute Resolution, a student must complete; one, the interactive Introduction to Alternative Dispute Resolution course; two, the online Theories and Methods of

Alternative Dispute Resolution course; three, one of the specialized courses; and four, the sixty-hour practicum. ISADR also offers additional courses for mediators to refresh their skills or gain additional knowledge. There is the Advanced Negotiation Training, Intercultural Competency, and Nonviolent Communications course, which all are very valuable courses for mediators to stay current with issues.

According to the interviews I conducted with the experts within the field of training mediators, it is a good idea to keep the current structure of the certification program provided by ISADR. Only the Theories and Methods of Alternative Dispute Resolution course is offered strictly online. The other courses are based on hands-on skill training and therefore need to remain in the current face-to-face format. Doing so will maintain the high-quality learning outcome, ensuring that only highly trained and competent mediators are receiving the Certificate of Alternative Dispute Resolution.

Recommendations

Theories and Methods of Alternative Dispute Resolution is a thirty week long supervised reading/response course that does not require classroom attendance. It is a directed-readings course (not an independent study course) as there are specific assigned readings to complete and respond to. Currently, this course consists of five extensive essays that are due about every six weeks. Course success requires self-motivation, focus, and the ability to adhere to deadlines while producing intellectual essay responses.

In order for ISADR to maintain the highest quality of mediation training, and based on the literature review, the ACR ethical and professional responsibility guidelines,

and the interviews, I recommend to making the online Theories & Methods of Alternative Dispute Resolution course more interactive, but maintaining its current content for the most part. The course will remain as the second mandatory course within the certification program as a whole. As I outlined in the literature review in part one of this work, particular emphasis must be given to making sure that students remain interactive and get the feeling of “course community.”

The New Layout of the Online “Theories & Methods of Alternative Dispute Resolution,” Course

In order to engage the students in an interactive learning environment and foster a sense of course community, I propose a structural course change. This structural change is reflected in the new Syllabus I created (See Appendix D). Seven strategically placed weeks will be spent on creating and maintaining an interactive course community. The first week will be spent creating a class community and focusing on getting to know the instructor and the other students. This will also give the students time to purchase required materials and ask for clarification on the syllabus, the required readings, and the writing assignments.

Weeks seven, twelve, eighteen, twenty-three, and twenty-nine are used to reflect and discuss the previous modules. During this time the students can also discuss challenges they have encountered completing the last module’s reading and writing assignments. These discussions keep the students actively involved in the learning process. This is also a good time for the instructor to evaluate how the course is progressing, and if the students have mastered the material sufficiently in order to move

on to the next module, or in the instance of week twenty-nine, are ready to move on to the next course. During week twelve, I also suggest that a MidSemester evaluation be conducted. This is where the students can anonymously state their likes and dislikes about the course. They can also suggest reasonable changes for the instructor to take into consideration. This will foster a feeling of collaborative learning, and will show that a student's input in the learning process is very important to the instructor and ISADR. Such a MidSemester evaluation is a great tool to enhance self-reflection on the part of the instructor as well.

Week thirty, the last week of this course, is spent debriefing and evaluating the course in general. Just as in a face-to-face course, where the last class is often used to say good-byes, and general socializing, during this time of an online course the students may also wish to exchange contact information in order to stay in touch with fellow future mediators.

In-between the above-mentioned interactive weeks, there are five separate modules, each with assigned readings and provocative assignment questions that illuminate important points (See Appendices E-I). Course length provides time for extensive reflection, resulting in detailed and thoughtful written responses to the assigned readings. Instructor feedback is provided to the students for each assignment received. Between the modules, there is one week of review and discussion for the students to reflect, discuss, and learn from each other. Online posts and thoughtful contributions to the discussions are required as well.

In conclusion, I have redesigned this already excellent course by making it more interactive in order to keep the students engaged with the content, each other, and the instructor. This new format enhances the learning process by providing ample opportunities for interaction, discussion, reflection, and collaboration.

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APPENDIX A: FIRST EMAIL

Hello Dr. (or Professor) X,

I am in my last semester of grad school and am getting ready to put the final chapter on my thesis. Dr. Betsy Watson is the chair of my thesis committee. Dr. Watson is my thesis chair and recommended for me to contact you.

The theoretical part of my thesis is on online education and the effects on student learning outcome. This portion is basically finished.

As you must be very well aware of, many online mediation training institutions are springing up all over the place. Their programs are entirely online. Some are enhanced by video tapes or video streaming. Nevertheless, they are not taught face-to-face as our courses are.

ISADR offers only one of our mediation courses online; the theories and methods course that is offered once a year is fully online. However, the class is about theoretical aspects of the job of a mediator. Online education seems to be effective for such a class.

You are an expert in the field of mediation and mediation training, and I would like to informally interview you on what you think about purely online mediation training. Can it be effective? If so, how much of it can be done online? What, in your opinion, cannot be done effectively online? Is there a component of mediator training that you feel must be done in a face-to-face environment? You would be referenced in my Thesis. I can do this interview in person, or over the telephone. I do not have all my questions ready and approved yet, but maybe I can contact you next week about setting an appointment?

Let me know if you would be willing to share your opinion with me on this very subject.

Thank you, Gisela Chappelle

APPENDIX B: SECOND EMAIL

Hello Dr (or Professor). X,

A few days ago I asked you if you would be willing to be interviewed about mediator training being offered online. Thank you for agreeing to be interviewed. Below this email is the description of what I will be asking you, and what I will be doing with the information you will be providing me with.

I would like to set up an appointment time with you. This interview should take no longer than a half of an hour.

Ideally I would like to come and see you during one of the following times:

--Wednesday, February 21st or February 28th anytime after 1pm.

--Thursday, February 22nd or March 1st, between the hours of 1pm and 6pm.

--Friday, February 23rd or March 2nd, between the hours of 9am and 6pm.

If the above mentioned times do not work for you, we can figure out a different time. Let me know where you would like to meet.

Thank you very much for agreeing to be interviewed by me.

Gisela Chappelle

Description of what I am doing for this part of my thesis:

I am planning on doing an analysis on how effective online education could be in the training of mediators of alternative dispute resolution. I will conduct informal, unstructured, in in-depth—intensive interviews, either in person or over the telephone,

with experts in the field of training mediators. The questions I am examining about the new upcoming trend of training mediators online are:

--Can a mediator trainer train mediator trainees in a face-to-face skill through a purely online medium training environment?

--How would a mediator trainer teach the art of a mediator addressing the presentation of “self” within an actual mediation situation in an online learning environment?

--Can an online training method teach the art of non-verbal communication, which is an essential part of successful mediation?

--Are there certain components of the mediator training that could be enhanced by an online learning environment?

Basically, I will ask you if you think online mediation training could be done effectively.

1. If your answer is no;

--Why do you think it could not be done effectively in online environment? I want to find out why you think mediation should be learned in a face-to-face learning environment.

What is lacking in an online learning environment that would hinder the training of successful mediators?

--Do you think that online education could be used to enhance the training of mediators?

If the answer is yes to that, what components of the training might be enhanced by online education and why?

2. If the answer is yes;

--Do you think there is anything that could not be taught online, or can the entire training can be done online? How does a mediator instructor teach non-verbal communication online?

Would you want to utilize video-tapes, or live video streaming in order to teach non-verbal communication and the mediator's presentation of the self?

Method: As mentioned above, I will informally interview about twelve mediator trainers in person or over the telephone. I will record the interviews and then transcribe them.

After the transcription, I am planning on manually coding them with colored markers and post-it notes. By doing so, I am hoping that I can illuminate common terms and themes within the interviews that may shed some light as to why an online environment may be a good medium in training mediators, or why it may not be. Maybe it turns out that online education should only be used to enhance face-to-face courses? It would be interesting to find out if, and what components of the mediator training could be enhanced by online training. If it turns out that the overarching theme is that online education is not suited in the training of mediator, I would like to find out why.

APPENDIX C: SHORT BIOGRAPHIES OF THE INTERVIEWEES

Marco Rotting is a social worker for Humboldt County and has participated in the operations of ISADR for the past four years. Although he has is not officially in the business of training mediators, he has conducted many mediations himself, and helped train and coach mediator students in our ISADR courses. Dr. Sue MacConnie, a professor at Humboldt State University, has taken ISADR classes and is particularly interested in online education. Dr. Anthony Kontos, also a professor at Humboldt State University, is particularly interested in online education.

The remaining eleven interviewees are professional mediators and mediator trainers. David E. Booher is a Senior Policy Advisor at the Center for Collaborative Policy, California State University Sacramento. He teaches graduate courses in policy mediation and collaborative policy making, provides public policy facilitation and mediation assistance to Center clients, and oversees the Center's research program. David has over 25 years of experience in public policy mediation and facilitation practice and research.

Susan Carpenter, Ed.D. has spent thirty years developing and managing programs to address controversial public issues. She was the founding director of the Program for Community Problem Solving in Washington, D.C. and she served ten years as the associate director of ACCORD Associates in Boulder, Colorado. Dr. Carpenter holds a Doctorate in Future Studies from the University of Massachusetts. Dr. Carpenter is the co-author of *Managing Public Disputes: A Practical Guide to Handling Conflict and*

Reaching Agreements. She currently works with organizations and groups to build capacity for collaborative leadership.

John A. Gromala, J.D. limits his practice to mediation, facilitation, consultation and training seminars for mediators and attorneys. In addition to resolving conflicts, he uses mediation during the formation or reorganization of a business and during Estate Planning to minimize potential for future conflict. His mediation experience includes: commercial, construction and labor disputes; crisis management (large and small organizations); dissolution of corporations and partnerships, securities transactions; employment discrimination and harassment, hostile work environment; environmental and land use concerns, real estate valuation; facilitation of private and public conferences, public access problems; personal and property damage claims, tort actions; will, trust and conservatorship/guardianship contests.

Larry Hoover, M.A. is founder and current Director of U. C. Davis' Mediation Services. He designed and assisted in the implementation of both California's' State personnel Board and the Department of Fair Employment and Housing's mediation programs. He is also a founder of California's Dispute Resolution Council, a member of the Association for Conflict Resolution, and an associate at the Center for Collaborative Policy. Larry has mediated over 700 workplace disputes and lectures widely on conflict management.

Ron Kelly is one of the principal architects of California Mediation law, and a founder of the California Dispute Resolution Council and the Northern California Mediation Association. He advises organizations and governmental entities on the

formation of ADR law and policy. He teaches and trains through many universities and associations. The winner of five major awards from ADR professional organizations, he mediates and arbitrates cases through his Berkeley office.

Margaret Thomas Kelso, M.A. M.F.A. is a professor in the Theatre, Film and Dance department at Humboldt State University and is University Ombudsperson. In addition to traditional mediation train, she has studied Nonviolent Communication, created by Marshall Rosenberg, and its application in mediating conflicts ranging from interpersonal to international scope.

John Kinyon is a leading trainer of the international Center for Nonviolent Communication and a co-founder of the BayNVC organization. He offers NVC training and conflict resolution to individuals, groups, and organizations in workshop, practice group, and coaching contexts. John has a background in clinical psychology and has started three businesses. He regularly co-leads 9-day international trainings with NVC founder Marshall Rosenberg.

Ike Lasater offers mediation, consulting, and workshops with Nonviolent Communication in the U.S. and abroad. For 20 years until 1999 he engaged in active civil trial practice, co-founding Banchero & Lasater specializing in complex multiparty, commercial and environmental cases. He is on the mediation panel for the Northern California U. S. District Court, and for two decades served on the board of the Lawyers' Club of San Francisco and other non-profits.

Tasha J. Souza, Ph.D. is an Associate Professor of Communication at Humboldt State University. Since 1993, she has taught courses in training and consulting,

instructional communication, conflict management, gender and communication, interpersonal communication, and communication in organizations. She is Co-Director of the Institute for Study of Alternative Dispute Resolution (ISADR).

Jon Townsend, M.A. has assisted numerous organizations to diversify their workforce, negotiate “win-win” agreements, manage intercultural conflict successfully, and utilize and value differences in the workforce and community for over 34 years. Through Cascade Alternative Resolution Services and as a CRI and IDRS Senior Associate, Jon has conducted hundreds of workshops throughout the United States, England and internationally. He is the founder of the national award winning (NACO) Clackamas County Dispute Resolution Center, a member of CWA local 189, and a member of the Creek Indian Nation.

Elizabeth Watson, Ph.D. is a Professor of Sociology at Humboldt State University and is the Co-Director of ISADR, a Senior Associate for the Center for Collaborative Policy at CSU Sacramento, a member of ACR, the California Dispute Resolution Council (CDRC), and the American Sociological Association (ASA). Betsy mediates timber harvest plans, land use and workplace conflicts in northern California.

APPENDIX D: SYLLABUS

Humboldt State University • Fall/Spring 2007/2008

Office of Extended Education • Communication 480

Course Instructor: Gisela Rutishauser-Chappelle

COURSE DESCRIPTION:

This directed-readings course guides participants through an exploration of the nature and characteristics of social conflict. A theoretical basis of conflict resolution is applied to a variety of case studies and discussed in relation to the ADR methodology learned. Course content includes conflict theory, competing theories of alternative dispute resolution, negotiation, ethics, and best practices. Students will learn to assess contemporary conflicts, prepare cases for mediation, design agendas for interest-based negotiation, and important elements in agreements. The readings in this course should serve to enhance the material presented in the fast-paced first course on negotiation and the mediation process.

COURSE OBJECTIVES:

Upon successful completion of this course, the student/mediator (you) will be able to:

1. Understand the basic characteristics of human social conflict;
2. Understand the theoretical concepts that explain the dynamics of human social behavior in groups;

3. Apply the theories of social conflict and human behavior in the analysis of social conflicts;
4. Understand the characteristics of conflict escalation and de-escalation;
5. Understand the processes used by mediators to analyze conflicts;
6. Understand the procedures used by mediators in the case development process;
7. Perform preliminary case development procedures, including identifying stakeholders, interests, and issues within specific conflicts;
8. Understand the transformative approach to mediation, its potential, and how it can be realized in practice;
9. Describe types of negotiation and their characteristics;
10. Describe the basic steps in interest-based negotiation;
11. Understand the use of “power” in negotiating strategies;
12. Understand the concept of reframing issues;
13. Understand the basic procedures used in the ADR techniques of mini-trials, partnering, arbitration, and group facilitation;
14. Develop an agenda for a public meeting;
15. Analyze ADR techniques presented in various case studies;
16. Realize that there are many different strategies and styles used by practitioners in the ADR field;
17. Understand the content and use of formal agreements;
18. Develop a basic formal agreement;

19. Understand how assumptions and perspectives can influence a mediation and how the transformative approach illuminates these to parties;
20. Understand the ethical guidelines that govern mediators' professional behavior;
21. Understand the requirements that are included in the “Standards of Conduct for Mediators.”

REQUIRED READINGS:

The following texts are required for this course; you may elect to purchase these texts through the HSU bookstore by using the book order form:

Social Conflict: Escalation, Stalemate, and Settlement (third edition) by Dean G. Pruitt and Sung Hee Kim (ISBN: 0-07-285535-5)

The Promise of Mediation (second edition) by Robert A. Baruch Bush and Joseph Folger (ISBN: 0-7879-7483-8)

The Mediation Process (third edition) by Christopher Moore (ISBN: 07879-6446-8)

Getting to Yes (second edition) by Roger Fisher, William Ury, and Bruce Patton (ISBN: 0-14-015735-2)

Getting Past No (revised edition) by William Ury (ISBN: 0-553-37131-2)

Facilitator's Guide to Participatory Decision-Making (first edition) by Sam Kaner, with Lind, Toldi, Fisk, and Berger (ISBN: 0-86571-347-2)

*Theories and Methods of ADR Readings (available on web)

In addition to the listed texts, there are several other required readings that are available to you at no cost. You will need Adobe Acrobat reader software (free to download) to access materials.

COURSE DESIGN:

Theories and Methods of Alternative Dispute Resolution is a supervised reading/response course that does not require classroom attendance. It is a directed-readings course (not an independent study course) as there are specific assigned readings to complete and respond to. Course success requires self-motivation, focus, and the ability to adhere to deadlines while producing intellectual essay responses.

This is a thirty-week course. It begins October 2007 and concludes May 2008. There are five separate modules, each with assigned readings and provocative essay questions that illuminate important points. Course length provides time for extensive reflection, resulting in detailed and thoughtful written responses to the assigned readings. Instructor feedback is provided to the students for each essay received. Each written assignment within the modules is accessed separately.

Between the modules, there is one week of review and discussion for the students to reflect, discuss, and learn from each other. Online posts and thoughtful contributions to the discussions are required as well.

MODULES AND DISCUSSION FORUMS OUTLINE:

Module	Subject	Week	Written Assignment to Question due
	Introduction to the Course Creating an Online Community	1.	Introduction Posts and Responses

	Getting to know each other	
I	Readings in Conflict Theory	2. Introduction to Module 1 – Assignment 1a 3. Assignment 1b 4. Assignment 1c 5. Assignment 1d 6. Assignment 1e
	Review and Discussion	7. Review and Discussion Posts
II	Characteristics of Social Conflict and Perspectives in Mediation	8. Introduction to Module 2 – Assignment 2a 9. Assignment 2b 10. Assignment 2c 11. Assignment 2d
	Review and Discussion Mid-semester Evaluation	12. Review and Discussion Posts
III	Negotiation	13. Introduction to Module 3 – Assignment 3a 14. Assignment 3b 15. Assignment 3c 16. Assignment 3d 17. Assignment 3e
	Review and Discussion	18. Review and Discussion Posts
IV	ADR Case Studies and Facilitation	19. Introduction to Module 4 – Assignment 4a 20. Assignment 4b 21. Assignment 4c 22. Assignment 4d
	Review and Discussion	23. Review and Discussion Posts
V	Ethics and Qualifications	24. Introduction to Module 5 – Assignment 5a 25. Assignment 5b 26. Assignment 5c 27. Assignment 5d 28. Assignment 5e
	Review and Discussion	29. Review and Discussion Posts
	Conclusion	30. Evaluation and Good-byes

MODULES AND DISCUSSION FORUMS BREAK-DOWN:

Week 1. Introduction to the Course, Creating and Online Community, and Getting to Know Each Other.

In week one, the students can download and print the syllabus and the assignments schedule. This week is also meant for the students to have time to purchase the required textbooks.

The instructor will introduce him or herself as their instructor for the course, and post a welcome note with a little bio online for all the students to see. The student's task for the week is to introduce themselves and include a small bio about themselves, which should include why they are taking this course and what kind of prior mediation knowledge/experience they have.

Each student should acknowledge at least three other students and comment on what they find interesting or have in common with them.

Hopefully by the end of week one the students will know each other, had the time to read over the syllabus and assignment schedule, and purchase the required textbooks. Weeks 2 – 6. Module 1--*Readings in Conflict Theory*: explores the theoretical concepts underlying characteristics of human behavior in groups, and provides an introduction to the basic elements of social conflict.

During week two, Module one is introduced. With it will be the deadlines for Questions one through five. One question is due every week. The students will upload the answer to one question online every week electronically via the provided Moodle link. By the end of week six, the assignments for Module one are completed and submitted. Week 7. Review and Discussion, and Maintaining the Online Community

During week seven, each student can post general questions about Module one. The students are to try to figure out together the answers for these student generated

questions. The students are also to discuss their findings about Module one's readings and questions in general. Toward the end of week seven, the instructor is to participate in the discussion threads and answer any unclear or unanswered questions.

Weeks 8 – 11. Module 2--*Characteristics of Social Conflict and Perspectives in Mediation*: examines escalation and de-escalation of conflict, discusses methodologies for analyzing conflict, explores public dispute case development, and introduces the transformative approach to mediation.

During week eight, Module two is introduced. With it will be the deadlines for Questions one through four. One question is due every week. The students will upload the answer to one question online every week electronically via the provided Moodle link. By the end of week eleven, the assignments for Module two are completed and completed and submitted.

Week 12. Review and Discussion, and Maintaining the online Community.

During week twelve, each student can post general questions about Module two. The students are to try to figure out together the answers for these student generated questions. The students are also to discuss their findings about Module two's readings and questions in general. Toward the end of week twelve, the instructor is to participate in the discussion threads and answer any unclear or unanswered questions.

During week twelve, the students are invited to fill out a confidential online mid-semester course evaluation.

Weeks 13 – 17. Module 3--*Negotiation*: covers the techniques and theoretical basis of negotiation.

During week thirteen, Module three is introduced. With it will be the deadlines for Questions one through five. One question is due every week. The students will upload one the answer to one question online every week electronically on a provided Moodle link. By the end of week seventeen, the assignments for Module three are completed and submitted.

Week 18. Review and Discussion, and Maintaining the online Community.

During week eighteen, each student should post general questions about Module three. The students are to try to figure out together the answers for these student generated questions. The students are also to discuss their findings about Module three's readings and questions in general. Toward the end of week twelve, the instructor is to participate in the discussion threads and answer any unclear or unanswered questions.

Weeks 19 – 22. Module 4--*ADR Case Studies and Facilitation*: contains case studies of various types of applied mediation and provides tools for use when facilitating meetings.

During week nineteen, Module four is introduced. With it will be the deadlines for Questions one through four. One question is due every week. The students will upload one the answer to one question every week online electronically via the provided Moodle link. By the end of week twenty-two, the assignments for Module four are completed and submitted.

Week 23. Review and Discussion, and Maintaining the online Community.

During week twenty-three, each student can post general questions about Module four. The students are to try to figure out together the answers for these student generated questions. The students are also to discuss their findings about Module four's readings

and questions in general. Toward the end of week twenty-three, the instructor is to participate in the discussion threads and answer any unclear or unanswered questions.

Week 24 – 28. Module 5--*Ethics and Qualifications*: contains articles that discuss standards of conduct for mediators, illuminate some of the ethical dilemmas one might encounter, and provide guidance in the development of mediation agreements.

During week twenty-four, Module four is introduced. With it will be the deadlines for Questions one through five. One question is due every week. The students will upload one the answer to one question online every week electronically via the provided Moodle link. By the end of week twenty-two, the assignments for Module five are completed and submitted.

Week 29. Review and Discussion, and Maintaining the online Community.

During week twenty-nine, each student could post general questions about Module five. The students are to try to figure out together the answers for these student generated questions. The students are also to discuss their findings about Module five's readings and questions in general. Toward the end of week twenty-nine, the instructor is to participate in the discussion threads and answer any unclear or unanswered questions.

Week 30. Evaluation and Good-byes.

During week thirty, each student can post comments about the course in general. This is also the time when the instructor will ask the students to fill out a confidential online class evaluation. This is when the instructor will outline what other courses ISADR is offering during the coming summer. Hopefully the students will have developed lasting relationships and will stay in touch even after the course is over.

COURSE REQUIREMENTS:

You will be required to complete all assigned readings and written assignments. Specific guidelines are included within the instructions for each module. It is in your best interest that we stand firm on deadline dates each written assignment, with few exceptions for extenuating circumstances evaluated on an as-needed, case-by-case basis. Your essay assignments should be typed and double-spaced. This is a university class that requires you to be able to submit well-written responses that have been checked for grammar, spelling errors, etc.

Each written assignment will be commented on. Students who have not sufficiently demonstrated a comprehensive understanding of the readings through their responses will be offered guidance and the opportunity to re-write when necessary. Deadlines for re-writes will be negotiated with the instructor.

Besides the reading and writing assignments, there are also seven open forum discussions. The open forums are during the weeks when there are no assignments due. The students must post one original post in each of those seven weeks, and respond to at least three other student's original posts. So, even during the seven weeks where there are no reading or writing assignments due, the students must process information about the readings of the previous module and contribute to the online discussion threads. These discussion threads help students get to know each other and build an online community, just as they would if they were in a face-to-face class.

GRADING:

For those wishing to earn academic units, “Theories and Methods of Alternative Dispute Resolution” (Course II of the Mediator Certificate Program) is a four-unit class and is offered on a credit/no credit basis. Credit for the course will be given upon timely completion of course requirements. Everyone who turns in satisfactorily completed writing assignments on time will earn credit. In order to be deemed satisfactorily completed, you must address all questions posed and demonstrate a comprehensive understanding of the readings and their application. If a writing assignment fails to address questions posed or indicates that you have not completely understood the material, you will receive appropriate feedback and assistance to help to rectify the situation. You may be required to submit revisions to those assignments under the supervision of the course instructor. Note: to receive credit as Communication 480 on transcripts, you must register to receive these credits with the Office of Extended Education and pay the additional fees.

DEADLINE FOR COMPLETION:

It is very important that you understand that there is a finite end-date to “Theories and Methods of Alternative Dispute Resolution.” All course work (including revisions) must be received by midnight of week 29 in order for you to be credited for completing the course. You’re urged to submit your last written assignment earlier than the course end-date in case any revisions or additional information are required in order for your essay to receive “credit.” If you do not complete the course by the designated end date, you will not be allowed to re-enroll in the course in subsequent offerings without paying additional course enrollment fees. We must adhere to this policy due to many requests for

extensions without extenuating circumstances in the past. Please recognize this from the beginning and respond to the requirements accordingly.

INSTRUCTOR CONTACT:

Students are actively encouraged to get in touch to schedule appointments/phone conferences, and/or to pose questions on the class Moodle site.

Institute for Study of Alternative Dispute Resolution (ISADR), Humboldt State
University

Arcata, CA 95521-8299

E-mail: isadr@humboldt.edu

Phone number: 707-826-4750

ISADR fax number: 707 826-5450

APPENDIX E: MODULE 1

WRITING ASSIGNMENTS

Readings in Conflict Theory

A mediator, or any other process facilitator, can be more effective with an informed awareness of the social and personal dynamics behind people's interactions with each other.

The mediation process is based on certain assumptions about how humans act within groups and within various social contexts. The pioneering work in this field is *The Functions of Social Conflict*, by German-born social theorist Lewis Coser. Coser's primary thesis was that conflict, in conjunction with cooperation, is a process that is an adaptive necessity within social systems. This was a novel idea at the time, as other scholars who had studied conflict approached it as pathological. Coser's work comprises the basis of the theories behind Alternative Dispute Resolution (ADR), covers a great deal of conceptual ground within a minimum of text, and offers a concise read on the nature of human conflict. While covering the applications explored in subsequent modules, students may find merit in returning to the concepts presented within these readings (ONCORES Reading #1: *The Functions of Social Conflict*, chapters 2 & 7).

In a similar vein, the authors of *Social Conflict* contend that conflict nourishes social change and is a good thing, while recognizing the possibility of destructive conflict and its capacity to do great harm. As social psychologists, Pruitt and Kim describe in detail the varied strategies used by those experiencing conflict, while examining the causes

and consequences of their use. The authors' theory is designed to assist the reader in seeing generalizations that shed light on most conflicts (Text #1: chapters 1-3).

As the United States becomes more ethnically and thus relationally complex, mediators must remain current on issues of changing cultural diversity to function effectively. Racially-generated inter-group and intra-group hostility and tension pose some real challenges for mediation. In the short term, better tools to assess culturally-specific sources of inter-group & intra-group conflict, more awareness of cultural variation in concepts of conflict, and the adoption of more inclusive mediation models are needed (ONCORES reading #2: Communication Issues in Mediating Cultural Conflict”).

The ability to empathize — to see and feel a situation from the perspective of another — is vital for opening the door to negotiation and collaboration. The ability of a human being to take himself or herself as both subject and object gives each of us the potential to “take the role of the other,” that is, to see things from the perspective of someone else. If we are able to view ourselves from the outside, then we are also able to try to understand how another person might see things. We, as parents and teachers of young children, try to understand how it feels to have monsters living under our bed, or what it might be like to go to school for the first time. As automobile drivers we try to anticipate what another driver might do. Human interaction and social behavior are based on our assuming that we understand what the “other” will do (ONCORES Reading #3: Presentation of Self in Everyday Life - introduction).

Many dimensions of everyday interaction play a part in the social situations in which we find ourselves. After completing this selection of readings, the student should gain a clearer understanding of which dimensions are at work, and of fundamental analytical principles that may be used to assess conflict situations.

LEARNING OBJECTIVES

Upon completion of this module, the student/mediator will be able to:

1. Understand the basic characteristics of human social conflict;
2. Understand the theoretical concepts that explain the dynamics of human social behavior in groups;
3. Apply the theories of social conflict and human behavior in the analysis of social conflicts.

MODULE 1 READING ASSIGNMENTS

Readings: Listed below are a series of readings that you must complete prior to answering the essay questions. Readings 1-3 are available on the ONCORES site, located on Humboldt State University's website. Please refer to your syllabus for step-by-step instructions for accessing web materials. You may read these excerpts/articles on-line or print them out.

Reading #1: *The Functions of Social Conflict*, by Lewis Coser - chapters 2 and 7.

Reading #2: "Communication Issues in Mediating Cultural Conflict," by Donohue and Bresnahan.

Reading #3: *The Presentation of Self in Everyday Life*, by Irving Goffman – Introduction.

Textbook: *Social Conflict: Escalation, Stalemate, and Settlement*, by Pruitt & Kim - chapters 1-3.

WRITING ASSIGNMENTS

Listed on the following page are a series of questions designed to encourage you to apply the concepts you have become familiar with while completing the readings. Please submit your word-processed responses in a double-spaced format. There are no minimum or maximum length requirements, but try to stay focused.

If you have questions, why not post them on the discussion board? This will enable other students enrolled in this course to interact with you and to share their ideas and perceptions of the materials. Of course, feel free to email me at the above address if you need any assistance.

Please upload your assignments before the due dates in order to allow the instructor time to read through your response to determine if you are ready to go on to the next Module. Enjoy completing the readings and responses!

There is a “Glossary of Key Terms and Concepts” available on Blackboard for your reference throughout the course.

QUESTIONS AND DUE DATES:

1. a) By Saturday of week 2 (before midnight), please upload a written response to the following question:

Provide a brief summary of a national or international contemporary situation (within the past ten years) of conflict that is interesting to you. Examples may include: conflicts that have emerged in hurricane ravaged areas in the south; voting/ballot

problems in Florida during the 2000 election; conflicts over water rights, uses, and flow of a river; immigration problems in California, Texas or Florida; the major disputes around the logging of environmentally sensitive areas; or *any* similar situation where a complex conflict is evident. Try to keep this description brief (two or three paragraphs). Then answer the following questions, lettered a, b, c, and d:

Discuss two or three of Coser's propositions that you feel are the most applicable in this particular situation and explain why you selected these propositions. How did Coser's work improve or hamper your understanding of this conflict?

1. b) By Saturday of week 3 (before midnight), please upload a written response to the following question:

How could "Communication Issues in Mediating Cultural Conflict" (Donohue & Bresnahan) be used as a guide to assist the mediator in developing the cross-cultural insight to establish communication with and between the disputants in the conflict example you used? Please refer to specific relevant concepts presented in the article.

1. c) By Saturday of week 4 (before midnight), please upload a written response to the following question:

What concepts did you read in Goffman's "Presentation of Self in Everyday Life" that could apply to the conflict example you used? Look at this in terms of how parties to the dispute have been presenting themselves through the media, how they would want to present themselves in a potential mediation, and any differences that may exist between the personas being presented and the actual interests of the parties involved.

1. d) By Saturday of week 5 (before midnight), please upload a written response to the following question:

In chapters 1-3 of *Social Conflict*, the authors introduce the concept of translating interests into aspirations, and discuss relative deprivation and its role in conflict development. Using the conflict example you chose, please illustrate your understanding of how these concepts can be applied. Also address the perceived feasibilities (discussed in chapter 3) from the perspectives of those involved in the conflict; discuss how these have affected the strategies the parties have employed in the conflict (whether it is ongoing or resolved).

2.) By Saturday of week 6 (before midnight), please upload a written response to the following question:

What goals do you wish to achieve through your training in ADR? What types of ADR do you wish to specialize in and learn about? Please develop your answer fully. This will enable me to tailor responses to your essays in a manner that is more consistent with your educational and personal needs.

APPENDIX F: MODULE 2

WRITING ASSIGNMENTS

Characteristics of Social Conflict and Perspectives in Mediation

Social conflicts come in a variety of types and sizes. As a mediator you will need to understand the basic characteristics of conflicts in order to determine such things as the complexity and scope of the conflict-at-hand, as well as the potential for a case to be successfully mediated. In the first module the way in which individuals interact with each other in conflict situations was assessed. In this module the individuals and groups are placed in situations of social conflict and analyzed from the perspective of those who are potential mediators of such conflicts.

In order for a mediator to analyze a conflict, it is necessary that he or she understand not only the basic characteristics of conflict, but also the transformations that occur as the conflict progresses from simple to complex, or from a minor dispute to a major confrontation. In this module you will read perspectives on the characteristics of conflict from Pruitt & Kim and Moore. These readings serve to illustrate the basic structure of social conflict and how the knowledge of these basic characteristics can assist a mediator in processing a case.

The readings provided in this module will also illustrate how to use the skill of conflict analysis to set up the basic framework necessary to conduct a mediation. The analysis includes determining *if* the case can be mediated, who the parties are, what the issues are, as well as the positions and interests of the stakeholders in the dispute.

Much of what a mediator asks in doing an initial profile comes with experience and practice; however, Moore describes a step-by-step procedure for case development that will guide you through the most basic steps in preparing for mediation.

Case development is not merely a fact-finding exercise. It requires a thorough understanding of all the dynamics at work in a situation and an awareness of what role these dynamics may play as the conflict progresses. This selection of readings should help you to think critically about case development issues, and allow you to approach conflict situations in a constructive manner.

Additionally, this module introduces you to the “transformative story” of mediation. As Bush and Folger present their perspectives and theories about transformative mediation, you will see some similarities and differences between this approach and others expressed in the readings. Bear in mind that the many approaches one may use in mediation exist along a continuum, and empowerment and recognition of parties may not be a result exclusive to one approach.

LEARNING OBJECTIVES

Upon completion of this module, the student/mediator will be able to:

1. Understand the characteristics of conflict escalation and de-escalation;
2. Understand the processes used by mediators to analyze conflicts;
3. Understand the procedures used by mediators in the case development process;
4. Perform preliminary case development procedures, including identification of stakeholders, interests and issues relating to specific conflicts;

5. Understand the transformative approach to mediation, its potential, and how it can be realized in practice.

MODULE 2 READING ASSIGNMENT

Readings: Listed below are a series of readings that you must complete prior to answering the essay questions. Note: this module doesn't have an ONCORES reading component. However, there are additional articles of interest posted on the ONCORES site for this class that you may wish to read.

Textbook: *Social Conflict: Escalation, Stalemate, and Settlement*, by Pruitt & Kim -

Chapters

4 -10.

Textbook: *The Mediation Process*, by Christopher Moore - Parts One and Two, Chapters

1-7.

Textbook: *The Promise of Mediation*, by Robert Baruch Bush and Joseph Folger -

Introduction and Chapters 1-3

WRITING ASSIGNMENTS

Listed below are a series of questions designed to encourage you to apply the concepts you have become familiar with while completing the readings. Please submit your word-processed responses in a double-spaced format. There are no minimum or maximum length requirements, but try to stay focused. Your written responses should indicate that you have a clear understanding of the concepts discussed, and that you are able to employ them in real life situations.

If you have questions, why not post them on the discussion board? This will enable other students enrolled in this course to interact with you and to share their ideas and perceptions of the materials. Of course, feel free to email me at the above address if you need any assistance.

Please upload your assignments before the due dates in order to allow the instructor time to read through your response to determine if you are ready to go on to the next Module. Enjoy completing the readings and responses!

ASSIGNMENTS AND QUESTION DUE DATES:

Please pay careful attention to *all* instructions and questions posed and provide thorough responses.

1.) By Saturday of week 8 (before midnight), please upload a written response to the following question: Referring to *Social Conflict*:

a) In Chapter 4, the authors discuss eight contentious tactics (excluding violence and nonviolent resistance). Briefly describe them and how *you* have experienced their use in conflict situations (how you have used them, how you have had them used on you, and the effect they have had in varied contexts). Use examples to illustrate your points.

b) Looking back on the conflict you selected to write about in Module 1, discuss the use of all contentious tactics you believe were used by the parties involved.

2.) By Saturday of week 9 (before midnight), please upload a written response to the following question: Referring to *Social Conflict*, Part II: Escalation:

a) Transformations commonly occur in conflict – escalation itself is a process. The authors explain three models of escalation, two of which are very intertwined. Select

conflicts you're familiar with and give concrete examples from these which demonstrate your understanding of the contender→defender *and* conflict spiral models.

b) The structural change model explains the psychological states and changes that accompany escalation. *Hostile attitudes, perceptions, and goals* tend to persist and outlast the conflicts from which they stemmed. Turn to examples that you can draw from *your own* experiences with conflict and discuss/ demonstrate as many relevant points made by the authors in this section of the readings as you can.

c) Summarize the conditions that stabilize conflict; these will be useful for you to recall as a mediator.

3.) By Saturday of week 10 (before midnight), please upload a written response to the following question: Refer to *The Mediation Process*:

Select a conflict or potentially explosive situation from a recent newspaper article of your choice (or a situation about which you are well informed) and use Moore's guide to case development (Part Two) to prepare the case for mediation. Be sure to pick a case that you believe can be mediated and that you would be comfortable with.

a) Provide a description of the conflict, and then identify all of the stakeholders, their positions, and their interests.

b) Write a brief analysis describing potential "problem areas" that might erupt prior to or during the mediation. With what you have learned to-date in this course from all the readings, describe what your preparation for the potential eruptions might be.

4.) By Saturday of week 11 (before midnight), please upload a written response to the following question: Refer to *The Promise of Mediation* (new and revised edition):

- a) According to the authors, why are people, in general, so deeply affected by the disempowerment and disconnect so often associated with the negative conflict cycle? Do you believe this to be true, based on your own experiences? Please explain.
- b) In what ways do the underlying values of the transformative approach to mediation differ from those in a strictly problem-solving approach? Discuss some concrete ways the processes differ in terms of mediator conduct. From what you know of your style, would you be comfortable guiding parties through a “transformative” mediation? Do you feel you would be better suited to direct a settlement-driven approach?
- c) Focus on the concrete ways in which empowerment and recognition are realized by parties in mediation. How might the objectives of transformative mediation be realized in the case you wrote about in Question 3?

APPENDIX G: MODULE 3

WRITING ASSIGNMENT

Negotiation

Negotiation is an integral part of the mediation process. In successful mediations — those in which the parties are mutually satisfied with the outcome — interest based or win-win negotiation strategies are often employed. The mediator may have to shift the parties away from positional bargaining postures and into a problem-solving process where they reveal their needs to one another and attempt to reach a joint decision that meets as many of their needs as possible.

This module explores various types and techniques of negotiation and addresses how they may be related to the mediation process. The readings provided should further your understanding of how to conduct productive mediations.

The following section presents concepts meant to augment the assigned readings.

Types of Negotiation

Vertical negotiations: require those at the table to confer with others before decisions and agreements can be made.

Two common types of vertical negotiations are:

- *Bureaucratic bargaining* - occurs when a participant (or team) at the table must seek approval from those higher up in their organization before the agreement can be finalized.

The mediator should ask early on what the procedures will be to gain finalized agreements for each particular organization or agency.

- *Constituent bargaining*- occurs when parties at the table represent a larger group. To get finalized agreements the larger group must approve the agreements developed by their representatives at the table. Ratification of the agreements is usually done through voting. The mediator should understand before the beginning of the mediation how each participating group will accomplish the ratification.

Horizontal negotiations: are the negotiations that go on within a negotiation team and are common in public policy and environmental mediations. The team members' ability to work together effectively is quite important. Their contributions may vary -- one or more may have substantive expertise, others may bring great negotiation and communication skills to the table/team, while others may have different levels of influence and authority. Within a team there may also be differences in personal concerns and strategies. Therefore it is very important that a negotiation team do the following before the mediation starts:

- Assign roles and responsibilities (division of labor)
- Develop a team definition of the issues (prioritized)
- Develop settlement options acceptable to the group
- Agree on decision-making authority

Vested interest negotiations: are "under the table" negotiations that occur when a member of one team (with or without the knowledge of his/her team members) negotiates with the other side. This individual "sells out" his/her team, organization, or group to get what he/she personally wants. While this is not a recommended activity, it happens and should be kept in mind as a possibility.

Conciliatory negotiations: occur when one or more parties, with the knowledge and approval of team members, hold informal, private conferences with the other sides in an effort to narrow the distance between the parties on substantive issues about which they disagree.

Bi-lateral or multi-lateral negotiations: are negotiations in which there are formal discussions between teams or individuals across the table. These types of negotiations are conducted in formal sessions in which parties educate each other, generate options, and try to make agreements and ratify final decisions.

LEARNING OBJECTIVES

Upon successful completion of this module, the student/mediator will be able to:

1. Describe types of negotiation and their characteristics;
2. Describe the basic steps in interest-based negotiation;
3. Understand the use of “power” in negotiation strategies;
4. Understand the concept of *reframing* issues;
5. Understand different techniques which might be used in negotiating agreements;
6. Identify whether competitive, cooperative, or integrative strategies are being used by negotiators.

MODULE 3 READING ASSIGNMENT

Readings: Listed below are a series of readings that you must complete prior to answering the essay questions.

Textbook: *Getting to Yes*, by Roger Fisher, William Ury, and Bruce Patton – ALL

Textbook: *Getting Past No*, by William Ury – ALL

Textbook: *The Mediation Process*, by Christopher Moore – Chapters 8 - 13

ONCORES Module 3 reading #2: “Negotiation Techniques to Resolve Western Water Disputes,” by Berton L. Lamb and Jonathan G. Taylor

WRITING ASSIGNMENT

Listed below are a series of questions designed to encourage you to apply the concepts you have become familiar with while completing the readings. Please submit your word-processed responses in a double-spaced format. There are no minimum or maximum length requirements, but try to stay focused. Your written responses should indicate that you have a clear understanding of the concepts discussed, and that you are able to employ them in real life situations. Additionally, you should be sure to allow yourself ample time to go back and re-read what you have written. Check to be sure what you have written actually conveys what you mean it to. Editing is an important part of the writing process!

ASSIGNMENTS AND DUE DATES:

Please pay careful attention to all instructions and questions posed and provide thorough responses.

1.) By Saturday of week 13 (before midnight), please upload a written response to the following question: BATNA’s are an important element for parties to recognize in a negotiation.

a) What is a BATNA and how is it used in the negotiation process?

b) As mediator, at what point(s) in the mediation process might you refer or remind the parties to/of their BATNA'S? Why?

2.) By Saturday of week 14 (before midnight), please upload a written response to the following question: In *Getting Past No*, Ury discusses the “power paradox.”

a) What is the “power paradox” and what does Ury suggest the negotiator do to overcome this problem?

b) Briefly describe how a mediator may address this power paradox in the various stages of the negotiation process: pre-negotiation, negotiation, and agreement (use Moore’s *The Mediation Process* as a process guide).

3.) By Saturday of week 15 (before midnight), please upload a written response to the following question:

Toward the end of the book, Fisher, Ury & Patton identify and discuss “Ten Questions People Ask about Getting to Yes.” Select any two of these questions and discuss them as they compare and contrast to Moore’s approach in *The Mediation Process*.

4.) By Saturday of week 16 (before midnight), please upload a written response to the following question: You will find references to reframing from various readings required for this module.

a) What is meant by the phrase, “reframing issues?”

b) How is this very important skill used in the mediation process?

c) Please go back to the dispute you selected for case development in the last module and provide some hypothetical examples of how you, as mediator, would reframe You’ll have to use your imagination and craft statements the parties might say and then put on the

mediator's hat and reframe these statements. Please give examples of both interest-related issues and value-related issues (minimum of 3 each, written both before and after reframing).

5.) By Saturday of week 17 (before midnight), please upload a written response to the following question:

According to Lamb and Taylor, which strategy do stakeholders typically use at the beginning stages of negotiation? How might a mediator to a large water dispute help move parties from one strategy to another?

APPENDIX H: MODULE 4

WRITING ASSIGNMENT

ADR Case Studies and Facilitation

As more and more people discover there are alternatives to litigation, the field of mediation is reaching into more arenas than ever before. Many contracts include clauses mandating alternative dispute resolution strategies be employed should conflict/problems develop.

Following are three major substantive arenas in which mediation and other ADR techniques are practiced. Each of these are represented in the case studies you will select from to complete this module.

Domestic and Interpersonal Disputes:

Mediation of domestic and interpersonal disputes offers involved parties an alternative to lengthy and expensive litigation. It promotes communication and provides a foundation for continued cooperation and problem solving. In this arena, mediation is most often provided by mediators in private practice, by trained volunteers working through community service organizations, or by professional mediators working for local or state government agencies. Many family mediators have clinical backgrounds in fields such as social work or counseling.

Typical topics one might encounter in this arena:

- Sibling or parent/child conflicts
- Separation or divorce
- Spousal support arrangements
- Legal custody of children

- Wills and inheritances • Prenuptial agreements • Community property division •

Family-owned business disputes

- Guardianship or conservatorship disputes • Living arrangements or health care decisions of elders

- Landlord/tenant disputes (security deposits, non-payment of rent, habitability)

- Neighborhood disputes (noise, pets, use of common facilities)

Interpersonal conflicts can be quite emotionally charged. Before mediating, particularly in this arena, a mediator must closely examine his or her own values, beliefs and assumptions. The types of situations and issues that are encountered can be uncomfortable, making it challenging for a mediator to maintain the neutrality vital to the process. Thus practicing in this arena is not for everyone.

Commercial and Business Disputes

In the commercial and business disputes arena, ADR techniques are used to provide solutions to current problems, and also to proactively address potential problems that are foreseeable. Cooperative problem solving and effective communication skills are promoted through interest-based negotiation techniques. Mediation may be used within a company to resolve internal conflicts between employees or between managers and employees. It may also be employed externally to resolve disputes with customers or other business owners within the community. The California Department of Consumer Affairs currently refers the bulk of complaints received to mediation.

Typical topics one might encounter in this arena:

- *Partnership problems or dissolution • Business-to-business disputes • Disputes relating to contracts or sub-contracts*
- *Consumer/merchant disputes (refunds, services, etc.) • Discrimination and harassment • Employee/employer disputes (wages, dismissals) • Employee complaints, grievances, etc. • Conflicts with customers or clients • Real estate disputes*
- *Buying or selling business/commercial property • Partnering/future planning common facilities*

Mediating in the business environment provides the unique opportunity for professionals to assist in building frameworks of communication and cooperation within businesses and communities. You may find an in-house mediator position at your current place of employment or as a professional in a community agency. Additional training will provide you with the skills necessary to mediate a variety of commercial and business disputes.

Mediating Public Disputes:

Public disputes vary widely in type and complexity. The issues may be related to broad, general policies at local, state or even federal levels. Conversely, disputes can be centered on site-specific or highly focused local conflicts. Public disputes generally involve complex issues where the parties to the mediation (stakeholders) are numerous and varied. The role of the mediator is also more complex and involves considerable time and effort prior to the negotiations in order to identify stakeholders, issues, interests, and to design the initial framework in which the “process” can be created.

Typical topics one might encounter in this arena:

•Economic development conflicts •Local zoning disputes •Community development/planning issues •State development and planning issues •Environmental disputes - including land use, resource management, energy management, toxic/hazardous materials use, storage and disposal

Generally, mediators working in this field are well-connected within the community and have established working relationships with business leaders, government representatives and citizen groups. Some of the readings in this module will provide you with examples of site-specific mediations as well as with the basic design process used in very different public policy scenarios.

Other Frequently Used ADR Methods:

“Alternative Dispute Resolution” includes other techniques and methods besides mediation (ONCORES reading #5 will provide more information). Working as a professional mediator, you may be asked or required to perform services using other forms of alternative dispute resolution, or you may find yourself in situations where you’re asked to provide facilitation services for various business and/or community meetings.

Following are overviews of arbitration, mini-trials, partnering, and group facilitation.

Arbitration:

This is a form of ADR that uses a process similar to a trial. An arbitrator (or board of arbitrators) approved by the participants listens to narratives describing the nature of the conflict (positions) and then makes a decision (award) for the parties involved in the

dispute. The results may be “binding” or “advisory” depending on the preliminary agreements signed by the disputants. The arbitrator (acting as a neutral third party), the parties in dispute, their attorneys and relevant witnesses generally attend this evidentiary hearing. The general format includes opening statements, witness testimony, cross-examination, and closing statements.

As you review the information covering arbitration, keep in mind that “binding arbitration” affords no form of appeal. However, it has some positive benefits:

1. Rules of evidence are much more lenient than in litigated cases
2. The arbitrator must reach a decision within a specified amount of time
3. The pre-arbitration agreement can be tailored to:
 - limit the number of witnesses
 - set parameters on the type and amount of evidence presented
 - set “high/low” boundaries on awards
4. Arbitrators are usually “subject matter experts” and well-advised on technical data involved in the case
5. Results of arbitration are generally not made public.

Arbitration has been used effectively in a variety of disputes such as:

- Insurance claims

- Employee termination settlements
- Commercial property disputes
- Business dissolution

Mini-Trials:

Mini-trials are an ADR technique used extensively by government agencies and businesses to resolve a variety of disputes. A mini-trial is not a trial. It is a method of resolving conflicts in which attorneys representing parties present their “cases” to a panel that includes a senior management representative from each side and a neutral third party.

After the presentations, the managers and mediator meet in a problem-solving negotiation session. The results of mini-trials are confidential and non-binding and can serve several positive functions.

This ADR method not only provides time and cost savings but also establishes a way to solve conflicts and preserve relationships among organizations that frequently work together. The reading assignment includes an in-depth discussion of the structure of mini-trials as well as both the positive and negative characteristics of this method. A case study is included that details both the design and process, while illustrating the flexibility of the mini-trial.

Partnering:

Partnering was conceived of and developed in the construction industry in response to the costly and time-consuming effects of conflicts and subsequent litigation between contracting parties. The basic concepts of partnering applied within the construction industry may be used to assist in building a cooperative problem-solving

management team that can be effective in any large project involving a number of parties responsible for the completion of separate functions of the overall effort.

Partnering involves the creation of a management team whose members represent the key players from all organizations that are parties to the contract. The cooperative management team focuses on the identification of common goals and benefits throughout contract execution, and its task is to form a process to keep the team working towards these goals. The management team sets cost-effective, timely goals and directs the efforts of all parties to the successful attainment of these goals, while avoiding adversarial confrontations among the participants.

The overall emphasis in partnering is in effective communication coupled with a spirit of cooperative problem solving at the highest levels of management. As you complete the assigned readings relating to partnering, keep in mind that these concepts can be applied in a variety of situations especially those in which two or more organizations work closely to achieve common or related goals.

Group Facilitation:

Third party neutrals facilitate the mediation process; though the format is quite different, many of the skills used in negotiation and mediation are also employed while facilitating a group – whether it is large or small. A mediator may be asked to facilitate meetings for local businesses, civic groups, or on a larger scale, town meetings or public hearings.

The functions of a facilitator vary according to the type and size of the meeting format. Some situations require little input in the identification of issues to be addressed

while, in others, the facilitator may need to manage the identification and prioritization of topics to be addressed. Generally, prior to the meeting, mediators contact the parties involved, develop agendas, and they may schedule the time and location of the meetings.

During the meeting, a facilitator:

- encourages open and equal communication among participants
- keeps the process moving by focusing on agenda items
- assures full participation
- summarizes group discussions
- assists in setting future goals
- assists in setting future goals
- brings the meeting to a close

LEARNING OBJECTIVES

Upon successful completion of this module, the student/mediator will be able to:

1. Understand the basic procedures used in the ADR techniques of mini-trials, partnering, arbitration and group facilitation;
2. Develop an agenda for a public meeting;
3. Analyze ADR techniques presented in various case studies;
4. Realize that there are many different strategies and styles used by practitioners of alternative dispute resolution.

MODULE 4 READING ASSIGNMENT

Textbook: *Facilitators Guide to Participatory Decision-Making*, by Kaner, Lind, Toldi, Fisk, and Berger

Textbook: *The Promise of Mediation*, by Robert Bush and Joseph Folger, Chapters 4 - 5, pages 131 - 214

Posted Readings:

Reading #1: "The Mini-Trial: Pamphlet 1", U.S. Army Corps of Engineers, by Lester Edelman, Frank Carr and James L. Creighton

Reading #2: "Non-Binding Arbitration: Pamphlet 2", U.S. Army Corps of Engineers, by Lester Edelman, Frank Carr, Charles Lancaster and James L. Creighton

Reading #3: "Partnering: Pamphlet 4", by Lester Edelman, Frank Carr and Charles L. Lancaster

Reading #4: "Bassett Creek Water Management Commission: Case Study #8", by Lawrence E. Susskind as P.I.

Reading #5: "General Roofing Company: Case Study #9", by Lawrence E. Susskind as P.I.

Reading #6: "Small Projects Partnering: The Drayton Hall Streambank Protection Project / Charleston

County, South Carolina", by Susan L. Podziba as Principal Investigator

WRITING ASSIGNMENTS

This module is different than the previous modules because there are many questions. The questions are designed to stimulate thought and provide you a means of demonstrating your understanding of the concepts you have read about. In addition to question one, you are answering questions which are hinged to case studies that use a variety of ADR techniques.

Please submit your responses in a typed, double-spaced format. There are no minimum or maximum length requirements, however keep in mind that writing succinctly is the goal. As always, feel free to contact us via email if you have anything you'd like to discuss.

Upon successful completion of this module, you will be ready to complete Module Five (the last module in this course). Enjoy this assignment!

ASSIGNMENT QUESTIONS AND DUE DATES

During the monthly community services district meeting in the once shack-filled, now developing oceanside town of Coastalville, the board divulged the fact that they were in the using eminent domain proceedings to acquire the dairy farm adjacent to the Happy River. They advised those attending that the growing town's wastewater disposal problems would be resolved once they acquired the property where they could distribute treated wastewater seasonally when river flows would not allow for direct river disposal.

The Board said that those property owners in the neighborhood of the dairy farm would be invited to attend meetings in which they could share their vision of how the project might look in order to be satisfactory. The topics they wanted feedback on included fencing options, lighting, developing a trail to the river, the adjacent community trail which would be paved, and parking. Realizing that the property owners nearby could perceive the project as a detriment, the board decided to hire a facilitator to run the meetings. You have agreed to accept the job to facilitate for the community services district.

1.) By Saturday of week 19 (before midnight), please upload a written response to the following question: Using *Facilitator's Guide to Participatory Decision-Making*, develop an agenda for the first meeting.

How will you know who to invite? How will you invite them?

Will you try to speak to some or all neighbors before the first meeting?

You will need to determine the goal(s) of the meeting(s); how will you go about this?

How will you prioritize discussion topics? Why? Will you set time limits?

Will you divide the attendees into smaller discussion groups? If so, how would you group them?

What issues might be major sources of conflict that could emerge during the discussions?

Why?

Please take the time to think all of this through and provide your rationale for the decisions you make.

2.) By Saturday of week 20 (before midnight), please upload a written response to the following question: Explain what you see as the benefits of using a mini-trial (Module 4 Oncores Readings #1 & #5). In the General Roofing Company case, the process was tailored to suit the parties and was, therefore, a hybrid process.

What decision made this a non-traditional mini-trial? Why was this decision made?

What nuances were used by the neutral to bring about a cooperative atmosphere?

How did the role of the "neutral advisor" change during the process?

What effect did this have on the outcome of the case?

3.) By Saturday of week 21 (before midnight), please upload a written response to the following question:

After reading the pamphlets on mini-trials, arbitration and partnering (Readings #1, #2, #3, #4, #5 & #6) compare and contrast these ADR methods. In your response, please consider strengths and weaknesses of each method. How do these methods differ from mediation or facilitation? Also, offer examples of disputes (which differ from those presented in the reading examples) which would seem well-suited for the use of each model.

4.) By Saturday of week 22 (before midnight), please upload a written response to the following question: When reading chapters 4 & 5 in *The Promise of Mediation* (textbook option), you will read a transcript of a transformative mediation involving two homeowners residing in an exclusive housing development.

How and when does the mediator go about turning control of the process over to the parties?

The mediator doesn't choose to bring the parties back to topics of importance that have been brought up but not followed up on. When you notice this, do you feel the mediator is responsibly handling the process?

Do you feel the responsive posture that the mediator takes would be responded to favorably by the majority of people? In what situations would you foresee this approach as being received in a less favorable manner (if any)? Would you be comfortable mediating using the transformative style as modeled in the transcript? Really imagine yourself in the mediator's shoes: Would you be able to be as non-directive and

completely willing for the parties to make all of their own decisions? How comfortable were you with the mediator's choices?

Do you feel a more traditional interest-based mediation geared toward agreement would have likely been more productive? Please explain.

APPENDIX I: MODULE 5

WRITING ASSIGNMENTS

Ethics and Qualifications

This module contains the final written assignment for Theories and Methods of Alternative Dispute Resolution. The readings will provide you with: general information on negotiated settlements/ agreements; suggested strategies for dealing with difficult or special situations in mediation practice; professional ethics; and standards of conduct for mediators.

FORMAL SETTLEMENTS

Mediation's final stage often includes developing a written memorandum of understanding or agreement. Negotiated agreements vary in format as well as in their degrees of complexity. The agreement that resolves a neighborhood dispute would be much less complex than, for example, an agreement detailing the multiplicity of interrelated aspects of a public policy dispute. Moore will discuss the application of different types of agreements, how to draft agreements, some methods of monitoring compliance, and the use of sanctions for violating express terms of agreements.

SPECIAL SITUATIONS IN MEDIATION

Every mediation is unique and will present its own set of challenges and problems. To a large extent, mediation skills are honed through the trials and errors encountered in practice. There are, however, certain procedures that a mediator can use to "guide" disputing parties through problem areas or to "level the playing field" when

power struggles block communication. You will review the strategies and techniques of using caucuses, the mediator's role in encouraging communication, as well as problems that frequently occur in larger, more complex mediations.

ETHICAL GUIDELINES AND STANDARDS OF CONDUCT FOR MEDIATORS

General guidelines for ethics and standards of conduct have been developed and adopted by a variety of agencies and jurisdictions who use mediators, yet there are many dilemma-posing situations that may occur for which there are no proscribed rules to rely upon for guidance.

Mediators are wise to seek opportunities that enhance their skill-set, better enabling them to effectively handle ethical dilemmas and make appropriate referrals when necessary. Attendance and participation in professional conferences, workshops, and advanced trainings provides an important outlet for networking and sharing reflected upon experiences with other professionals.

The Dilemmas of Mediation Practice is a report of the findings revealed through a study conducted in Florida in which 80 mediators were interviewed to determine what types of problems had been encountered in their mediation practices. Many of the specific problem areas identified in the study are presented with generalized solutions and discussions of policy implications.

Within this module, an agreement between AAA (American Arbitration Association), ABA (American Bar Association) and former SPIDR (Society for Professionals in Dispute Resolution) now ACR (Association for Conflict Resolution), "Standards of Conduct", and a code of conduct that was adopted by a mediation

organization in Colorado provide examples of guidelines for the ethical and professional standards of conduct for mediators. While differing somewhat in format, their similarities are evident.

Each state currently has some form of legislated policy relating to ADR but these vary in both scope and content. Legislative information regarding mediation in your area may be obtained through local, state or national ADR organizations, public libraries, or through contacting a state's Office of the Attorney General. {Mediation: Law, Policy, Practice (Volumes I & II), by Craig A McEwen and Nancy H Rogers and Sarah Rudolph Cole, is a valuable reference listing relevant statutes for each state.}

LEARNING OBJECTIVES

Upon successful completion of this module, the student/mediator will be able to:

1. Understand the content and use of formal agreements;
2. Develop a basic formal agreement;
3. Understand how the transformative approach to mediation differs ideologically from settlement-oriented mediation;
4. Understand the ethical guidelines that govern a mediator's professional behavior;
5. Understand the requirements that are included in the "Standards of Conduct for Mediators."
6. Comprehend the ways in which a mediator who oversteps professional boundaries may find his/herself facing legal sanctions.

MODULE 5 READING ASSIGNMENT

Readings: Listed below are a series of readings that you must complete prior to answering the essay questions. This module requires you to visit the ACR – Association for Conflict Resolution – website, and to read an article posted as a resource. You will want to bookmark this site and return there to read the resources provided and to learn more about the profession. The web address is provided below adjacent to the Article listed.

Textbook: The Mediation Process, by Christopher Moore – Chapters 14 – Resource C

Textbook: The Promise of Mediation, by Robert A. Baruch Bush and Joseph P. Folger – Chapters 6 -7

Reading #1: “The Dilemmas of Mediation Practice: A Study of Ethical Dilemmas and Policy Implications.” by Robert A. Baruch Bush. A Report on a Study for The National Institute for Dispute Resolution, pp 8-28., 1992.

Reading #2: “Standards of Conduct for Mediators.” The American Arbitration Association; The American Bar Association; and the Association for Conflict Resolution.

http://www.abanet.org/dispute/documents/model_standards_conduct_april2006.pdf

Article: “Ten Ways to Get Sued: A Guide for Mediators.” Michael Moffitt. In Harvard Negotiation Law Review (Spring 2003). Go to:

http://www.acrnet.org/pdfs/ethics_article_2003.doc

<http://www.acrnet.org/> is the address for the Association for Conflict Resolution

WRITING ASSIGNMENTS

Following are a series of questions that have been designed to encourage you to demonstrate your understanding of the concepts you have become familiar with through

the completion of the readings, and to provoke you to think of how you would handle difficult situations that have been encountered in actual mediations by others.

There are no minimum or maximum length requirements however keep in mind that writing succinctly is the goal. Please upload your module assignment on Moodle. As always, feel free to e-mail us at isadr@humboldt.edu if you have anything you would like to discuss.

ASSIGNMENTS AND DUE DATES:

1.) By Saturday of week 24 (before midnight), please upload a written response to the following question:

This is your chance to construct a sample agreement. Provide a brief description of a resolved conflict you're aware of (or refer to a case study provided in previous readings) and the issues that were resolved – then develop a sample agreement. The Mediation Process discusses formal agreements and provides a sample Memorandum of Understanding that you may use for guidance. Please remember to include details in your agreement that will make implementation easier and lessen the chances of further conflict over ambiguity.

2.) By Saturday of week 25 (before midnight), please upload a written response to the following question:

In the last sections of their book, Bush and Folger try to address and dispel myths and misconceptions of transformative mediation. They also discuss a relational worldview that underpins the transformative approach. Part 1: Please discuss your own understanding of human nature, social interaction, and conflict.

At this point, you should have developed more self-awareness in terms of how you might feel conducting mediation and what style you would tend toward and have the most comfort using. You were asked the following in Module 2: “From what you know of your style, would you be comfortable guiding parties through a “transformative” mediation? Do you feel you would be better suited to direct a settlement-driven approach?” ** Part 2: Has your response to the question shifted at all? Please expand upon your initial response and address how comfortable you believe you are with “conflict talk.”

3.) By Saturday of week 26 (before midnight), please upload a written response to the following question:

Refer to the reading, “Findings of the Study” from *The Dilemmas of Mediation Practice*. Select five different major substantive areas (shown in Table I, Pages 2-3 as A - I) and then carefully examine the examples provided for each subcategory. Select one example under each substantive area (letter) and discuss the method you would use to address the problem presented. Please label your selection so that it is clear which you are referring to, e.g., B. 2.a. example 2. Your responses may be based on the readings, prior experience, and common sense (often a mediator’s most valuable tool).

4.) By Saturday of week 27 (before midnight), please upload a written response to the following question:

For each of the situations selected in question #3, refer to “Standards of Conduct for Mediators” and briefly describe which standards may apply to those situations and explain why. Note: you may chose to combine this question with Question 3 by

launching into your discussion after each of the example situations you listed with your method of tackling the problematic situation. Be sure to make it clear to me that you are responding to this question, Question 4, by labeling the portion of the response specifically with a bolded 4 where you begin addressing it.

5.) By Saturday of week 28 (before midnight), please upload a written response to the following question:

The article “Ten Ways to Get Sued: A Guide for Mediators” illustrates the ways that a mediator who does not adhere to the “Standards of Conduct for Mediators” may face legal sanctions. The article provides good examples of how one not exercising care could overstep professional conduct standards, but the author cannot turn to specific cases of mediators being sued because so few exist. I’d like you to give me feedback about how useful you found this article and why you think I asked you to read it.

This module represents the final assignment in Part II of the Mediator Certificate Program, for those of you on that track. Upon successfully completing all of the modules, you will receive a “Certificate of Completion” for this course, Theories and Methods of Alternative Dispute Resolution.

APPENDIX J: ETHICAL STANDARDS OF PROFESSIONAL RESPONSIBILITY

Ethical Standards of Professional Responsibility

The purpose of this document is to promote ethical conduct and a high level of competency, including honesty, integrity, impartiality and the exercise of good judgment among members in their dispute resolution efforts.

**These standards were adopted by SPIDR in 1986. The Standards are currently being reviewed by the ACR Standards Committee for the Association for Conflict Resolution.*

Adopted June 1986

The Society of Professionals in Dispute Resolution (SPIDR) was established in 1972 to promote the peaceful resolution of disputes. Members of the Society believe that resolving disputes through negotiation, mediation, arbitration and other neutral interventions can be of great benefit to disputing parties and to society. In 1983, the SPIDR Board of Directors charged the SPIDR Ethics Committee with the task of developing ethical standards of professional responsibility. The Committee membership represented all the various sectors and disciplines within SPIDR. This document, adopted by the Board on June 2, 1986, is the result of that charge.

The purpose of this document is to promote among SPIDR Members and Associates ethical conduct and a high level of competency, including honesty, integrity, impartiality and the exercise of good judgment in their dispute resolution efforts. It is hoped that this document also will help to (1) define the profession of dispute resolution, (2) educate the public, and (3) inform users of dispute resolution services.

Application of Standards

Adherence to these ethical standards by SPIDR Members and Associates is basic to professional responsibility. SPIDR Members and Associates commit themselves to be guided in their professional conduct by these standards. The SPIDR Board of Directors or its designee is available to advise Members and Associates about the interpretation of these standards. Other neutral practitioners and organizations are welcome to follow these standards.

Scope

It is recognized that SPIDR Members and Associates resolve disputes in various sectors within the disciplines of dispute resolution and have their own codes of professional conduct. These standards have been developed as general guidelines of practice for neutral disciplines represented in the SPIDR membership. Ethical considerations relevant to some, but not to all, of these disciplines are not covered by these standards.

General Responsibilities

Neutrals have a duty to the parties, to the professions, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and not seek to advance their own interests at the expense of their parties'.

Neutrals must act fairly in dealing with the parties, have no personal interest in the terms of the settlement, show no bias towards individuals and institutions involved in the dispute, be reasonably available as requested by the parties, and be certain that the parties are informed of the process in which they are involved.

Responsibilities to the Parties

1. **Impartiality.** The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all parties as opposed to a single party.
2. **Informed Consent.** The neutral has an obligation to assure that all parties understand the nature of the process, the procedures, the particular role of the neutral, and the parties' relationship to the neutral.

3. Confidentiality. Maintaining confidentiality is critical to the dispute resolution process. Confidentiality encourages candor, a full exploration of the issues, and a neutral's acceptability. There may be some types of cases, however, in which confidentiality is not protected. In such cases, the neutral must advise the parties, when appropriate in the dispute resolution process, that the confidentiality of the proceedings cannot necessarily be maintained. Except in such instances, the neutral must resist all attempts to cause him or her to reveal any information outside the process. A commitment by the neutral to hold information in confidence within the process also must be honored.

4. Conflict of Interest. The neutral must refrain from entering or continuing in any dispute if he or she believes or perceives that participation as a neutral would be a clear conflict of interest and any circumstances that may reasonably raise a question as to the neutral's impartiality. The duty to disclose is a continuing obligation throughout the process.

5. Promptness. The neutral shall exert every reasonable effort to expedite the process.

6. The Settlement and its Consequences. The dispute resolution process belongs to the parties. The neutral has no vested interest in the terms of a settlement, but must be satisfied that agreements in which he or she has participated will not impugn the integrity of the process. The neutral has a responsibility to see that the parties consider the terms of a settlement. If the neutral is concerned about the possible consequences of a proposed agreement, and the needs of the parties dictate, the neutral must inform the parties of that

concern. In adhering to this standard, the neutral may find it advisable to educate the parties, to refer one or more parties for specialized advice, or to withdraw from the case. In no case, however, shall the neutral violate section 3, Confidentiality, of these standards.

Unrepresented Interests

The neutral must consider circumstances where interests are not represented in the process. The neutral has an obligation, where in his or her judgment the needs of parties dictate, to assure that such interests have been considered by the principal parties.

Use of Multiple Procedures

The use of more than one dispute resolution procedure by the same neutral involves additional responsibilities. Where the use of more than one procedure is initially contemplated, the neutral must take care at the outset to advise the parties of the nature of the procedures and the consequences of revealing information during any one procedure which the neutral may later use for decision making or share with another decision maker. Where the use of more than one procedure is contemplated after the initiation of the dispute resolution process, the neutral must explain the consequences and afford the parties an opportunity to select another neutral for the subsequent procedures. It is also

incumbent upon the neutral to advise the parties of the transition from one dispute resolution process to another.

Background and Qualifications

A neutral should accept responsibility only in cases where the neutral has sufficient knowledge regarding the appropriate process and subject matter to be effective. A neutral has a responsibility to maintain and improve his or her professional skills.

Disclosure of Fees

It is the duty of the neutral to explain to the parties at the outset of the process the basis of compensation, fees, and charges, if any.

Support of the Profession

The experienced neutral should participate in the development of new practitioners in the field and engage in efforts to educate the public about the value and use of neutral dispute resolution procedures. The neutral should provide pro bono services, where appropriate.

Responsibilities of Neutrals Working on the Same Case

In the event that more than one neutral is involved in the resolution of a dispute, each has an obligation to inform the others regarding his or her entry in the case. Neutrals working with the same parties should maintain an open and professional relationship with each other.

Advertising and Solicitation

A neutral must be aware that some forms of advertising and solicitations are inappropriate and in some conflict resolution disciplines, such as labor arbitration, are impermissible. All advertising must honestly represent the services to be rendered. No claims of specific results or promises which imply favor of one side over another for the purpose of obtaining business should be made. No commissions, rebates, or other similar forms of remuneration should be given or received by a neutral for the referral of clients.