

STEVE PENROD ADR 1997

NOTE: After session 12 (at which point student presentations may begin) these are resources and **not** assignments. Assigned materials up to session 12 are noted in larger font--the small font materials are meant as resources. After session 12, the larger font materials are those I=ve used in the class in the past.

Textbooks:

Nolan-Haley, J.M. (1992). *Alternative Dispute Resolution*. St. Paul: West. 283 pp.

Readings: Assignments include relevant appendices.

Classroom Presentations: Conduct in-class sessions built around assigned readings and additional resource materials (pairs of students). Presentations, pedagogical objectives, and readings arranged in advance with instructor

Discussion/Commentaries: for 15 of the classroom sessions: in response to assigned readings, submit a one-page (single spaced--300 word max) commentary, critique, evaluation, ideas for discussion to box at library desk. These are due 24 hours in advance of class and are intended for the presenters. Commentaries should be numbered sequentially and the class date to which the commentary refers should be noted.

No Exam: No final.

Grades: 25% classroom participation, 25% class presentations, 35% commentaries, 15% timely reading of assignments (assessed at end of semester).

SCHEDULE

WEEK 1 (8/28)

1. ORGANIZATION

2. THE DISPUTING LANDSCAPE

Nolan-Haley 1-10

Miller, R.E. & Sarat, A. (1980-81). Grievances, claims and disputes: Assessing the adversary culture. *Law and Society Review*, 15(3-4), 525-566. [copies on reserve]

The legal profession: The rule of lawyers. (July 18, 1992). *The Economist*. pp. 1-18.

Trubek, D.M., Sarat, A., Felstiner, W., Kritzer, H.M., & Grossman, J.B. (1983). The costs of ordinary litigation. *UCLA L. R.*, 31, 74-126. [148]

WEEK 2 (no class 9/4, 9/5 or 9/11B Penrod at conference)

3. No class-to be rescheduled

4. No class-to be rescheduled

WEEK 3 (9/11)

5. No class-to be rescheduled

6. THE LITIGATION CONTEXT-1

Saks, M.J. (1992). Do we really know anything about the behavior of the tort litigation system--and why not? *University of Pennsylvania Law Review*, 140(4), 1147-1195. [copies on reserve]

WEEK 4 (9/18)

7. THE LITIGATION CONTEXT-2

Saks: 1196-1252.

8. THE LITIGATION CONTEXT-3

Saks: 1253-1292.

Fiss, O.M. (1984). Against settlement. *Yale Law Journal*, 93, 1073-1081. [64]

WEEK 5 (9/25)

9. Planning sessions for presentations

10. Planning sessions for presentations

WEEK 6 (10/2)

11. ADVERSARIALNESS-1

Cross, F.B. (1992). The first thing we do, let's kill all the economists: An empirical evaluation of the effect of lawyers on the United States economy and political system. 70 *Tex. L. Rev.* 645-683. [126]
38 *S. Tex. L. Rev.* 407 May, 1997 Symposium Ethics in Alternative

Dispute Resolution: New Issues, No Answers from the Adversary
 Conception of Lawyers' Responsibilities Carrie Menkel-Meadow
 Carrie Menkel-Meadow, Pursuing Settlement in an Adversary Culture:
 A Tale of Innovation Co-Opted or "The Law of ADR", 19 *Fla. St. L.
 Rev.*1 (1991)

Victor, M.B. (1985). The proper use of decision analysis to assist
 litigation strategy. *The Business Lawyer*, 40, 617-629.

Jones & Laughlin Steel Corp. v. Pfeiffer, 462 U.S. 523 (1983).

Bodily, S.E. (May-June, 1981). When should you go to court? *Harvard
 Business Review*, 103-113.

Natl Assoc of Govt Employees v. National Fed of Federal Employees,
 844 F.2d 216 (5th Cir. 1988).

Rule 68 FRCP (Nolan-Haley, p. 212)

12. CIVIL JUSTICE REFORM-1

Cornelius, F. (1994). Crushed by my own reform. *New York Times*. [3]
 Marc Galanter, & Mia Cahill. (1994). "Most cases settle": Judicial
 promotion and regulation of settlements, 46 *Stan. L. Rev.* 1339-1391.
 [200]

Galanter, Marc. (1993). News from nowhere: The debased debate on
 civil justice. 71 *Denv. U. L. Rev.* 77. [129]

Eisenberg, Theodore, & Henderson, James A. Jr. (1992). Inside the
 quiet revolution in products liability, 39 *UCLA L. Rev.* 731. [222]

Tobias, Carl. (1992). Civil justice reform roadmap. 142 *F.R.D.* 507. [37]

Schuck, P. H. (1994). How to respond to the "problems" of the civil
 jury. 77 *Judicature* 236. [28]

Henderson, Jr., James A. & Eisenberg, Theodore. (1990). The quiet
 revolution in products liability: an empirical study of legal change. 37
UCLA L. Rev. 479. [222]

Chesebro, Kenneth J. (1993). Galileo's retort: Peter Huber's junk
 scholarship. 42 *Am. U. L. Rev.* 1637. [331]

Bovbjerg, Randall R. (1993). Medical malpractice: Research and
 reform 79 *Va. L. Rev.* 2155. [173]

Weiler, Paul C.; Hiatt, Howard H.; Newhouse, Joseph P.; Johnson,
 William G.; Brennan, Troyen A.; & Leape, Lucian L. (1993). *A measure
 of malpractice: medical injury, malpractice litigation, and patient
 compensation*. Harvard University Press. 178pp.

Eisenberg, Theodore, & Henderson, James A. Jr. (1992). *Inside the quiet revolution in products liability*, 39 *UCLA L. Rev.* 731. [222]

WEEK 7 (10/9)

13. CIVIL JUSTICE REFORM-2

Galanter, M. Garth, B., Hensler, D., and Zemans, F.K. (1994). How to improve civil justice policy. *77 Judicature* 185. [15]

Vargo, John F. (1993). The American rule on attorney fee allocation: the injured person's access to justice. *42 Am. U. L. Rev.* 1567-1636. [151]

James W. Meeker, John Dombink, (1993). Access to the Civil Courts for Those of Low and Moderate Means. *66 S. Cal. L. Rev.* 2217

Wangerin, Paul T., The Political and Economic Roots of the "Adversary System" of Justice and "Alternative Dispute Resolution", *9 Ohio State J on Dispute Resolution* 203 (1994). [128]

Walters v. National Association of Radiation Survivors, 473 U.S. 305 (1985). [170]

14. CIVIL JUSTICE REFORM-3

Rustad, Michael & Koenig, Thomas. (1993). The historical continuity of punitive damages awards: Reforming the tort reformers. *42 Am. U. L. Rev.* 1269-1333. [267]

TXO Production Corp. V. Alliance Resources, 113 S. Ct. 2711; 1993. [13]

BMW

Cather G; Greene E; & Durham R. (1996). Plaintiff injury and defendant reprehensibility --Implications for compensatory and punitive damage awards. *Law and Human Behavior*, 20, 189-205. [48]

Civil juries award punitive damages in 6 percent of successful suits. July 16, 1995. U.S. Department of Justice, BJS. [4]

Reder, Margo E. K. (1995). Punitive damages are a necessary remedy in broker-customer securities arbitration cases. *29 Ind. L. Rev.* 105. [103]

Jaynes. Gregory. (March 20, 1995). Where the torts blossom: while Washington debates rules about litigation, down in Alabama, the lawsuits grow thick and wild. *Time*, Vol. 145, No. 11, 38. [28]

Friedlander, Julie A., Note. Punitive Damages as a Remedy for Discrimination Claims in the Securities Industry, *23 Hofstra LR* 225

(1994).

Henderson, Jr., James A. & Twerski, Aaron D. (1993). Will a new restatement help settle troubled waters: reflections. *42 Am. U. L. Rev.* 1257.

Deborah R. Hensler, , 1995. *73 Tex. L. Rev.* 1587. SYMPOSIUM: NATIONAL MASS TORT CONFERENCE: A Glass Half Full, a Glass Half Empty: The Use of Alternative Dispute Resolution in Mass Personal Injury Litigation.

Rustad M; Koenig T. (1995). Reconceptualizing punitive damages in medical malpractice--Targeting amoral corporations, not moral monsters. *Rutgers Law Review*, *47*, 975-1083.

Schwartz, Teresa Moran. (1993). Punitive damages and regulated products. *42 Am. U. L. Rev.* 1335.

Schwartz, Victor E. & Behrens, Mark A. (1993). Punitive damages reform--state legislatures can and should meet the challenge issued by the supreme court of the United States in *haslip*. *42 Am. U. L. Rev.* 1365.

Galanter, Marc & Luban, David. (1993). Poetic justice: Punitive damages and legal pluralism. *42 Am. U. L. Rev.* 1393.

WEEK 8 (10/16)

15. NEGOTIATION EXERCISES--COMPETITION & ETHICS Car & Advertising Problems

Nolan-Haley 11-53

Rubin, Michael H., The Ethics of Negotiation: Are There Any?, 56 *Louisiana LR* 447 (1995).

38 S. Tex. L. Rev. 407 South Texas Law Review May, 1997

Symposium Ethics in Alternative Dispute Resolution: New Issues, No Answers from the Adversary Conception of Lawyers' Responsibilities Carrie Menkel-meadow [Fna]

Boskey, James B. (1993). Blueprint for negotiations. *48 Disp. Resol. J.* 8-18.

Huber, P. (1984). Competition, conglomerates, and the evolution of cooperation. *Yale Law J.*, *93*, 1147-1172.

Axelrod, R. & Dion, D. (Dec. 9, 1988). The further evolution of cooperation. *Science*, *242*, 1385-1390.

Brams, Steven J. and Taylor, Alan D., *Fair Division: From Cake-Cutting to Dispute Resolution*, Cambridge University Press, 40 West

20th St., New York, NY 10011-4211 (286pp \$54.95(c) \$18.95(p) 1996).

Exxon case.

Russell Korobkin & Chris Guthrie. (1994). Psychological Barriers to Litigation Settlement: an Experimental Approach, 93 Mich. L. Rev.

Menkel-Meadow, C. (1984). Toward another view of legal negotiation: The structure of problem. *UCLA Law Review*, 31, 754-855.

Mendenhall, Robert W., Post -Sottlement Settlements: Agraoing to Make Resolutions Efficient, 1996 *J Of Dispute Resolution* 81 (1996)

White, Machiavelli and the Bar: Ethical limitations on lying in negotiation (1980) American Bar Foundation Research Journal., 926-930.

Albin, C. (1993). The role of fairness in negotiation. *Negotiation Journal*, 9, 223- 244.

Model Rules of Professional Conduct: DR 1-102A, DR 7-102A, DR 7-105A 1983

Zeckhauser, Richard J., Keeney, Ralph L., and Sebenius, James K., *Wise Choices: Decisions, Games, and Negotiations*, Harvard Business School Press, 60 Harvard Way, Boston, MA 02163 (496pp \$45 1996).

16. NEGOTIATING STYLES

Graham, J. L. (1993). The Japanese negotiation style. *Negotiation Journal*, 9, 123-140.

Lind, E.A., Huo, Y.J., & Tyler, T.R. (1994). . . . And justice for all. *Law and Human Behavior*, 18, 269-290.

22 *Brook. J. Int'l L.* 605 1997 a Comparison of Court-connected Mediation in Florida and Korea Kwang- Taeck Woo

Harpole, Sally A., *Arbitration in China* 52 *Dispute Resolution J* #1 72 (Jan.1997)

Savage, Cynthia A., Culture and Mediation: A Red Herring, 5 *American U J of Gender and L* 269-309 (1996)

Halpern, Jennifer J. And Parks, Judi McLean, Vive la DiffJrence: Differences Between Males and Females in Process and Outcomes in a Low-Conflict Negotiation, 7 *International J of Conflict Management* 45 (1996).

McCormack, Mark H., *On Negotiating*, Dove Books, Suite 217, 301 N. Canyon Dr., Beverly Hills, CA 90210 (210pp \$19.95 1995).

Connor, A., *Dirty Negotiating Tactics and Their Solutions*, Wyvern

Business Library, Wyvern House, 6 The Business Park, Ely,
Cambridgeshire CB7 4JW, England (20pp \$19.95)

WEEK 9 (10/23)

17. MEDIATION-EXERCISES

18. MEDIATION--PROCESS

Nolan-Haley 54-78 (Mediation--don't forget appendices)

Henderson, Douglas A., Mediation Success: An Empirical Analysis, 11
Ohio State J of Dispute Resolution 105 (1996).

McEwen, Craig, Mediation in Context New Questions for Research, 3
Disput Resolution Magazine #2 16 (1996)

51-Mar Disp. Resol. J. 30 Dispute Resolution Journal January/march,
1996 Feature Who Is Seeking to Use ADR? Why Do They Choose to
Do So? Lamont E. Stallworth, Ph.d. Linda K. Stroh, Ph.d.

26 U. Mem. L. Rev. 975 University of Memphis Law Review Spring,
1996 Alternative Dispute Resolution Symposium the Sophisticated
Consumer's Guide to Alternative Dispute Resolution Techniques: What
You Should Expect (Or Demand) from ADR Services Thomas R.

Mccoy

52-Jan Disp. Resol. J. 35 Dispute Resolution Journal January, 1997
Feature an Introductory Primer on Pre-litigation: ADR Counseling for
the Outside Lawyer Mark A. Buckstein

11 Ohio St. J. on Disp. Resol. 105 Ohio State Journal on Dispute
Resolution 1996 Mediation Success: an Empirical Analysis Douglas A.
Henderson

Moore, Christopher W., *The Mediation Process (2d Ed)*, Jossey-Bass
Publishers, 350 Sansome St., San Francisco, CA 94104-9825 (450pp
\$29.95 1996).

14 Alternatives to High Cost Litig. 31 Alternatives March 1996

"Evaluative" Mediation Is an Oxymoron Kimberlee K. Kovach and Lela
P. Love

76 Mich. B.j. 160 Michigan Bar Journal February, 1997 Feature the
Role of the Advocate in Mediation Laurence D. Connor

19 Loy. L.a. Int'l & Comp. L.j. 1 Loyola of Los Angeles International and
Comparative Law Journal October, 1996 International Mediation--a
Better Alternative for the Resolution of Commercial Disputes:
Guidelines for a U.s. Negotiator Involved in an International

Commercial Mediation with Mexicans Julie Barker

10 Temp. Int'l & Comp. L.j. 313 Temple International and Comparative Law Journal Fall 1996 a Comparative Analysis of Community Mediation in the United States and the People's Republic of China Robert Perkovich

Tjosovold, Dean and van de Vliert, Evert. (1994). Applying Cooperative and Competitive Conflict Theory to Mediation, 11 *Mediation Q.* 303-311.

Umbreit, Mark S., *Mediating Interpersonal Conflicts: A Pathway to Peace*, CPI Publishing, PO Box 678, West Concord, MN 55985 (292pp \$11.95 1995).

Wall, James A. Jr., Community Mediation in China and Korea: Some Similarities and Differences, 9 *Negotiation J* 141 (1993)

WEEK 10 (10/30)

19. MEDIATION--LAWYERS-CONFIDENTIALITY-ENFORCEABILITY

Nolan-Haley 78-119

Leonard Riskin, (1982). Mediation and lawyers 43 *Oh St.L.J.* 29- 60.

Cochran, Robert F. Jr. (June 1993). Must lawyers tell clients about alternative dispute resolution?, 48 *Arbitration J* 8-13.

Brown, Kent L. (1991) Confidentiality in Mediation: Status and Implications, 1991 *J of Dispute Resolution* 307-334.

Alfini, James; Barkai, John; Bush, Robert Baruch; Hermann, Michele; Hyman, Jonathan; Kovach, Kimberlee; Liebman, Carol; Press, Sharon & Riskin, Leonard. (1994). What happens when mediation is institutionalized?: to the parties, practitioners, and host institutions. 9 *Ohio St. J. on Disp. Resol.* 307-332.

1 Harv. Negotiation L. Rev. 185 Harvard Negotiation Law Review Spring 1996 Case Comment Institutionalizing ADR: Wagshal v. Foster and Mediator Immunity Wagshal V. Foster, 28 F.3d 1249 (D.c. Cir. 1994). Brian Dorini

Stephen P. Younger (1993) Overview of key ADR options. Carol M. Welch, 481 *Pli/Lit* 11.

Boomer, Robert G. (1994). Making the most of court ordered mediation. 49 *Disp. Resol. J.* 17-22..

Note, Enforceability of Mediated Agreements. (1986). 1 *Ohio St.J. Dispute Res.* 385- 405.

Green, E. (1986). A heretical view of the mediation privilege. 2 *OHJDR* 1
 7 World Arb. & Mediation Rep. 78 World Arbitration & Mediation Report
 March, 1996 Around the State Pennsylvania Enacts Statutory Privilege
 for Communications in Mediation

MEDIATION-GUEST

20. CONDUCTING THE MEDIATION, MEDIATION ETHICS/QUALIFICATIONS--EXERCISE

Nolan-Haley Appx F

Bush, Robert A. Baruch. (1994). A study of ethical dilemmas and policy implications. 1994 *J. Disp. Resol.* 1-55.

Spolter, Jerry. (1994). Checklist for successful mediation. 49 *Disp. Resol. J.* 26-30.

38 *S. Tex. L. Rev.* 757 May, 1997 Symposium Reflections on Ethics and Mediation Robert P. Schuwerk

Joseph, Cassandra E.; The Scope of Mediator Immunity: When Mediators Can Invoke Absolute Immunity, 12 *Ohio State J on Dispute Resolution* 629-684 (1996)

38 *S. Tex. L. Rev.* 625 South Texas Law Review May, 1997

Symposium Ethical Implications of Attorneys Requiring Clients to Submit Malpractice Claims to ADR Jean Fleming Powers

Joseph S. Hellman (1993). The Anatomy of a mediation. 481 *Pli/Lit* 97.

Irvine, Mori. (1994). Serving Two Masters: The Obligation under the Rules of Professional Conduct to Report Attorney Misconduct in a Confidential Mediation. 26 *Rutgers L. J.* 155-

Stulberg, Joseph B. (1994). Bush on mediator dilemmas. 1994 *J. Disp. Resol.* 57.

Salem, Richard A. (1994). Ethical dilemmas or benign neglect? 1994 *J. Disp. Resol.* 71.

Stamato, Linda. (1994). Easier said than done: resolving ethical dilemmas in policy and practice. 1994 *J. Disp. Resol.* 81-7

Gentry, Deborah B. (1994). Mediator attitudes and preferences concerning mediator certification, 11 *Mediation Q.* 353- 359.

Pruitt, Dean G., et. al., long-term success in mediation, 17 *Law and Human Behavior* 313 (1993).

Depner, Charlene E. et. al., client evaluations of mediation services: the impact of case characteristics and mediation service models, 32

Family and Conciliation Courts R 299 (1994)

Eric R. Max (1993) Bench Manual for the Appointment of a Mediator. .481 *Pli/Lit* 117.

Kelly P. Corr & David R. Goodnight (1993). Making ADR Cost Effective: Simple Tips to Make ADR Work for You. 481 *Pli/Lit* 517.

WEEK 11 (11/6)

21. MEDIATION--LABOR AND COURT SETTINGS

Feuille, Peter. (1992). Why does grievance mediation resolve grievances?, 8 *Negotiation J* 131-145.

Valtin, Rolf. (1993). The real and substantial" benefits of grievance mediation, 9 *Negotiation J* 179- 183.

Wissler, R. (1995). Mediation and adjudication in small claims court: The effects of process and case characteristics. *Law and Society Review*, 29, 323-358.

75 Neb. L. Rev. 91 Nebraska Law Review 1996 Comment a Practitioner's Guide to General Order 95 -10: Mediation Plan for the United States District Court of Nebraska Mark R. Privratsky Dispute Systems Design Working Group, *Evaluating ADR Programs*, Administrative Conference of the United States, Suite 500, 2120 L St. NW, Washington, DC 20037-1568 (32pp 1995).

51-oct Disp. Resol. J. 55 Dispute Resolution Journal October, 1996 Feature Low Profile/ High Potential: a Look at Grievance Mediation

Richard N. Block John Beck A. Robin Olson

Rogers, Thomasina V., *Toward Improved Agency Dispute Resolution Implementing the ADR Act*, Administrative Conference of the United States, Suite 500, 2120 L St. NW, Washington, DC 200, 37-1568 (55pp 1995)

22. MEDIATION--MEN, WOMEN, DIVORCE

Bryan, Penelope E. (1992). Killing us softly: Divorce mediation and the politics of power, 40 *Buffalo LR* 441-523.

McEwen, Craig, et. al., Bring in the Lawyers: Challenging the Dominant Approaches to Ensuring Fairness in Divorce Mediation, 79 *Minnesota LR* 1317 (1995).

Winston, David S., Participation Standards in Mandatory Mediation Statutes: "You Can Lead a Horse to Water ...", 11 *Ohio State J of Dispute Resolution* 187 (1996).

Brinig, Margaret F., Does Mediation Systematically Disadvantage Women, 2 *William and Mary J of Women and the Law* 1 (1995).

Bohmer, Carol and Ray, Marilyn L., Notions of Equity and Fairness in the Context of Divorce: The Role of Mediation, 14 *Mediation Q* 37 (1996)

70-Apr Fla. B.j. 54 Florida Bar Journal April, 1996 Column Screening Family Mediation for Domestic Violence Judge Chester B. Chance
Alison E. Gerencser

13 Prob. L.j. 157 Probate Law Journal 1996 Note Look Before You Leap: the Failed Promises of Child Custody Mediation Heidi M. Oh

83-Feb A.b.a. J. 55 Aba Journal February, 1997 Law Practice Divorce - Mediation Style Engaging in Rational Discussion Is More Civilized than Courtroom Sparring, but How Lawyers Fit in Is an Open Question Rita Henley Jensen

51-Mar Disp. Resol. J. 39 Dispute Resolution Journal January/march, 1996 Feature Divorce Mediation: Today's Rational Alternative to Litigation Allan Wolk

Maxwell, David. Gender differences in mediation style and their impact on mediator effectiveness, 9 *Mediation Quarterly* 353 (1992)

Winks, Patricia L.. (1980-81). Divorce mediation: A nonadversary procedure for the no-fault divorce 19 *J.Fam. L.* 615-653.

Kelly, Joan B., Power Imbalance in Divorce and Interpersonal Mediation, 13 *Mediation Q* 85 (1995).

Bryan, Penelope Eileen, Reclaiming Professionalism: The Lawyer's Role in Divorce Mediation, 28 *Family Law Q.* 177 (1994).

33-nov Ariz. Att'y 25 Arizona Attorney November, 1996 Feature Sex, Lies and Divorce Mediation Judith M. Wolf

Gaschen, Dane A., Mandatory Custody Mediation: The Debate Over its Usefulness Continues, 10 *Ohio State J on Dispute Resolution* 469 (1995).

Hauser, Joyce, *Good Divorces Bad Divorces: A Case for Divorce Mediation*, University Press of America, 4720 Boston Way, Lanham, MD 20706 (181pp \$24 1995)

Hendricks, Christy L., The Trend Toward Mandatory Mediation in Custody and Visitation Disputes of Minor Children: An Overview, 23 *J Family Law* 491 (1994).

Irving, Howard H. and Benjamin, Michael, *Family Mediation: Contemporary Issues*, Sage Publications, P.O. Box 5084, Thousand

Oaks, CA 91359-9924 (528pp \$58(c)\$27.95(p) 1995)

Kidde, Andrew, *Annotated Bibliography of Outcome Studies on Divorce and Custody Mediation*, Mediation Committee, Washington State Bar Association, 500 Westin Bldg., 2001 Sixth Ave., Seattle, WA 98121-2599 (20pp 1995)

Perry, Linda, Mediation and Wife Abuse, 11 *Mediation Q.* 313 (1994)

Bohmer, Carol and Ray, Marilyn L., Effects of Different Dispute Resolution Methods on Women and Children After Divorce, 28 *Family Law Q.* 223 (1994)

Hysjulien, Chery, et. al., Child Custody Evaluations: A Review of Methods Used in Litigation and Alternative Dispute Resolution, 32 *Family and Conciliation Courts Review* 466 (1994)

WEEK 12 (11/13)

23. MEDIATION--ENVIRONMENTAL& OTHER ISSUES

Stukenborg, Charlene. (1994). Comment. The proper role of alternative dispute resolution (ADR) in environmental conflicts, 19 *U Dayton LR* 1305-1339.

Hill, Eve L., Mediation of Disputes Under the Americans With Disabilities Act, 3 *Dispute Resolution Magazine* 6 (1997)

Shannon, Brian D., Another Alternative: The Use of Mediated Settlement Conferences to Resolve ADA Disputes Involving People with Mental Disabilities, 12 *Ohio State J on Dispute Resolution* 147-158

12 *Ohio St. J. on Disp. Resol.* 739 *Ohio State Journal on Dispute Resolution* 1997 Note & Comment Mediation as an Alternative Method of Dispute Resolution for the Individuals with Disabilities Education Act: a Just Proposal? Andrea Shemberg

7 *Seton Hall J. Sport L.* 315 *Seton Hall Journal of Sport Law* 1997

Comment the Effect of the Federally Imposed Mediation Requirement of the Indian Gaming Regulatory Act on the Tribal-state Compacting Process Mark E. Stabile

10-oct *W. Va. Law.* 19 *West Virginia Lawyer* October, 1996 Feature Mediation from a Defendant's (And Mediator's) Perspective Robert G. Steele, Esq.

44 *La. B.j.* 116 *Louisiana Bar Journal* August, 1996 Feature Mediation in Criminal Cases? Interviews with Four Prominent Players in the Criminal Justice Arena Janet M. Harrison

Stiftel, Bruce and Sipe, Neil, Mediation of environmental enforcement: overcoming inertia, 1992 *J of Dispute Resolution* 303 (1992)
 Gibbons, Fred. (1993). Mediating complaints in the public sector, 23 *Family Law* [England] 9-10.
 33-nov Ariz. Att'y 29 Arizona Attorney November, 1996 Feature Victim Offender Mediation Diana R. Hegyi Adam Glaser

24. ARBITRATION--LABOR

Nolan-Haley 119-149 (incl appendices)
 Culiner, H. B. (September 1994). Representing clients in arbitration proceedings - guidelines for lawyers, 49 *Dispute Resolution J* #3 48-52.
 McMahon, John P. (September 1994). The role of party-appointed arbitrators, 49 *Dispute Resolution J* #3 66-68.
 Costello, E. J. Jr. (1993). Selecting a neutral, 48 *Arb. J.* 42-44.
 Feller, D. E. (1993). End of the trilogy: the declining state of labor arbitration. 48 *Arb. J.* 18-25.
 Ponte, Lucille M., In the Shadow of Gilmer: How Post Gilmer Legal Challenges to Pre-Dispute Arbitration Agreements Point the Way Toward Greater Fairness in Employment Arbitration, 12 *Ohio State J on Dispute Resolution* 359 (1997)
 Bickner Mel L., et. al., *Developments in Employment Arbitration*, 52 *Dispute Resolution J* #1 8 (January 1997)
 Carter, James H., *Rights & Obligations of the Arbitrator*, 52 *Dispute Resolution J* #1 56 (January 1997)
 Cleary, John P., *Filling Mastrobuano's Order: The NASD Arbitration Policy Task force Ensures the Enforceability of Punitive Damage Awards in Securities Arbitration*, 52 *Business L* 100 (1996)
 Davis, Drew F., Recent Development. The Enforceability of Arbitration Agreements in Employment Disputes Between Securities Firms and Their Employees, 74 *Washington ULQ* 1291 - 1313 (1996)
 14 Alternatives to High Cost Litig. 89 Alternatives July/august 1996
 Briefs: Workers Not Forced to Arbitrate Securities ADR
 Levine, Mark W., The Immunity of Arbitrators and the Duty to Disclose, 6 *American R of International Arbitration* 197 (1995).
 76 Mich. B.j. 176 Michigan Bar Journal February, 1997 Feature De-Mystifying Securities ADR: Reform and Resurgence after McMahon
 Michael P. Coakley Mary A. Bedikian

- Buckley, Sharu Tandon, Practical Concerns Regarding the Arbitration of Statutory Employment Claims: Questions that Remain Unanswered After *Gilmer* and Some Suggested Answers, 11 *Ohio State J of Dispute Resolution* 149 (1996).
- Dunphy, Megan L., Comment. Mandatory Arbitration: Stripping Securities Industry Employees of Their Civil Rights, 44 *Catholic ULR* 1169 (1995).
- Coleman, Charles J. and Coleman, Gerald C., Toward a New Paradigm of Labor Arbitration in the Federal Courts, 13 *Hofstra Labor LJ* 1 (1995).
- Davis, Kenneth R., Protected Right or Sacred Right: The Paradox of Federal Arbitration Policy, 45 *De Paul LR* 65 (1995).
- Hopper, Penelope, Mandatory Arbitration and Title VII: Can Employees Ever See Their Rights Vindicated Through Statutory Causes of Action? *Metz v Merrill Lynch, Pierce, Fenner & Smith*, 1995 *J of Dispute Resolution* 315 (1995).
- Lewton, Robert J., Comment. Are Mandatory, Binding Arbitration Requirements a Viable Solution for Employers Seeking to Avoid Litigating Statutory Employment Discrimination Claims?, 59 *Albany LR* 991 (1996).
- Hayford. S. (1993). The coming third era of labor arbitration, 48 *Arb. J.* 8-79.
- Kielkopf, Andrew. (1993). Note. An Employee Perspective (*Gilmer v Interstate/Johnson Lane Corp.*, 111 *S.Ct.* 1647 (1991)), 22 *Capital ULR* 803- 831
- Bales, Richard A., Compulsory Arbitration of Employment Claims: A Practical Guide to Designing and Implementing Enforceable Agreements, 47 *Baylor LR* 591 (1995).
- Budnitz. (1995). Arbitration of Disputes Between Consumers and Financial Institutions: A Serious Threat to Consumer Protection. *Ohio State Journal on Dispute Resolution*
- Kall, David M., Double Standard Regarding Domestic Enforcement of International Arbitration Awards, 8 *Ohio St J on Dispute Resolution* 401 (1993)
- Harper, Conrad K., Arbitration and U.S. foreign relations, 49 *Dispute Resolution J* 8 (June 1994)
- Hoellering, Michael F., (June 1994). The Role of Arbitration Institutions in Managing International Commercial Arbitration, 49 *Dispute*

Resolution J 12

Malin, Martin H. & Ladenson, Robert F. (1993). Privatizing justice: a jurisprudential perspective on labor and employment arbitration from the Steelworkers trilogy to Gilmer. 44 *Hastings L.J.* 1187-1240.

Mason, Paul E., *The Corporate Counsel's View of International Commercial Arbitration*, 49 *Dispute Resolution J* 22 (June 1994)

WEEK 13 (11/20)**25. SEXUAL HARASSMENT ISSUES**

Costello, Edward J. Jr. (March 1992). The mediation alternative in sex harassment cases, 47 *Arbitration J* 16 -23.

Hoening, James K. (1993). Mediation in sexual harassment: balancing the sensitivities. 48 *Disp. Resol. J.* 51-53.

Irvine, Mori. (1993). Mediation: is it appropriate for sexual harassment grievances? 9 *Ohio St. J. on Disp. Resol.* 27

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