

UNIVERSITY OF DENVER  
Conflict Resolution Program

**CRES 4222: Theories of Practice I: Mediation Theories & Issues**  
Winter Quarter 2010

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Class Time: Tuesdays, 2-4:50  
Class Location: BMC 219  
Office Hours: Weds., 10-12, and  
by appointment

### **COURSE DESCRIPTION**

This two-course series, Theories of Practice I and II, will provide an examination of the nature and many possible roles of third parties in conflict intervention. Theoretical perspectives and case analyses will be used to understand the situations in which third parties operate. The Winter quarter course will begin by reviewing various third-party roles, as well as the contextual factors influencing the emergence of different intervention forms. Following this review, the bulk of the quarter will focus more specifically on theories and current issues in mediation. The second quarter, in the Spring, will turn to a more in-depth consideration of conciliation and reconciliation processes. Each course will consider the values, motives, resources, and competencies that third parties bring to their role, as well as ethical guidelines and the issues of power, neutrality, gender, and culture as they affect third-party functioning.

The course will use a combination of readings, observation, case studies, lectures and seminar discussions to enhance class members' understanding and appreciation of this central aspect of conflict analysis and resolution. The course also will involve participants in partnerships that will complete and present case analyses of selected third-party interventions.

This course presumes a basic knowledge of negotiation and hopefully mediation as well. Students lacking this are strongly advised to do supplemental reading of Fisher & Ury's *Getting to Yes*, further reading in Moore's *Mediation Process*, and/or take a local training course. Condensed trainings in negotiation and mediation are available through DU's University College or from local private providers. For example, in February, DU's University College will offer a classic 40-hour mediation training, led by well-respected Denver mediator Robin Amadei. Students are strongly encouraged to enroll if they have not yet received mediation training. This is true regardless of the level or domain of mediation they hope to study or practice in.

### **COURSE REQUIREMENTS**

**Readings preparation (25%)** – This will be handled in two ways:  
Readings weeks 1-3: **Quiz** over basic conflict analysis and resolution concepts on **Jan. 19**.  
Readings weeks 4-9: Discussion and critique of readings. By 10 am on the day of each week's meeting, starting with week 4, students will be expected to submit two discussion questions on that week's readings to the instructor, preferably by email. (See email listed above.) These will often, though not always, be used to stimulate class discussion on the assigned readings for the week.

**Case Analysis (45%)** – Class members will be asked to form teams of three or four and choose a particular, documented case of mediation. The case should be analyzed in terms of the nature of the conflict, a third-party intervention that was carried out including any issues that attended it, and the motives, values, and ethics, and competencies of the third party.

Your team will be asked to make two brief presentations during the term: the first a brief conflict analysis, and the second describing the mediation carried out to address the conflict, as well as the apparent motives, values, ethics, and competencies of the third party. Guidelines for both of these phases of case analysis will be provided so that cases can be compared in class discussion. This assignment is designed to provide experience in working in a professional team, to provide comparative illustration of course concepts for class discussions, and to deepen understanding of course material through application to an actual case. The final written version of the case analysis (20-25 pages) is due on **Mar. 12**, and *should incorporate class readings as well as outside research*. The mark will be assigned to the team as a unit, unless members negotiate to take individual marks based on identified components of analysis.

**Mediation Observations and Journal (30%)** – Understanding the dynamics, issues, and challenges of mediation requires observing it firsthand. Ideally, students have observed or participated in mediation before coming to this course. However, this course also creates several opportunities for students to experience mediation and related processes. These include:

- 1) in-class observation of simulated mediations, both videotaped and realtime.
- 2) videolinks for viewing mediation simulations
- 3) a standing opportunity to observe actual small claims settlement conferences at Jefferson County courthouse in Golden
- 4) periodic, and somewhat spontaneous, opportunities to observe actual mediations when they are scheduled through Jefferson County Mediation Services or Longmont Community Services. Details on these sites will be presented in class.

This assignment incorporates *observation, reflection, and integration*. Students in this course are required to view **three mediations via videolink**. Several are available through CRI/Law professor Jeffrey Hartje's website, at <http://www.law.du.edu/index.php/Faculty-Streaming-Videos/prof-jeff-hartje-streaming-videos>. (These website has other interesting videos to view also, but only the mediations will count for this assignment.)

Students also are required to spend **two hours outside of class**, at the site of a mediation provider, either observing real (not simulated) mediation or volunteering with a mediation provider such as the ones mentioned above. Boulder Mediation Services does not take outside observers welcomes (and train) volunteers. Only one hour of this requirement can be met through observing small claims mediation, since it is a unique and somewhat truncated form of "mediation."

These opportunities are meant to be accompanied by reflection on *linkages to course readings and class discussions*. This is an essential part of the assignment. Students will keep a 'journal' (8-10 pp.) summarizing observations and lessons learned, **and relating/incorporating course concepts and readings**, and all of these pieces will be taken into account to determine one's grade. Each entry should include a description of what was observed and/or done, and then reflections on it. Example:

"February 24 (2 hours) – Today I observed a staff member do two case intake interviews, and then observed the facilitation of a multiparty community meeting. The interviews went smoothly, but I was surprised to learn.... Perhaps this can be explained by Moore's (2003) chapter on .... Or possibly by Bush & Folger's (1994) point that..... "The community meeting setup was focused on achieving .....This reminded me of the reading by ..... Things I would suggest that they might have done differently, or in addition, include....."

In sum, the journal should document thoughts and reflections on: (a) the three hours spent at a site observing and/or volunteering, (b) the four mediation videos viewed outside of

class, and (c) additional observation opportunities that one utilized, such as online, in class, etc. *Be sure to include connections to course readings.* The journal will be turned in twice: Part I, reflections on videos and the in-class simulation, is due **February 2**, and Part II, including observations and reflections on live mediations is due **March 4**.

Though the requirement for this course is only three hours at a mediation center, students who do not yet have hands-on experience mediating are strongly encouraged to **continue** volunteering with a local mediation center beyond this course to gain critical experience during this initial year of the program.

NOTE: For all papers, please use APA (American Psychological Association) referencing style. For the formal case analysis paper, submit a paper that you would submit for publication, i.e., polished, and clearly the result of more than one draft. Grammar, style, punctuation, etc., are considered in grading. Informality, disorganization, and improper citation and referencing, etc., will affect a paper's grade.

## **TEXTS**

### **A. Required books,** recommended for purchase:

Bercovitch, J. (ed.) (2002). *Studies in international mediation*. New York: Palgrave Macmillan.

Bush, R.A.B. and Folger, J.P. (2004) edition. *Promise of mediation*. Jossey-Bass.

Harnack & Kleppinger. (2007). *Online! A reference guide to using internet sources*. Bedford/St. Martin's.

Moore. C. (2003). *The mediation process*. (3<sup>rd</sup> ed.) Jossey-Bass.

Pruitt, D. G., and Kim, S. H. (2004). *Social conflict: Escalation, stalemate, and settlement*. (3<sup>rd</sup> ed.). New York: McGraw-Hill.

Ury, W. (2000). *The third side*. Penguin.

Zehr, H. (2002). *The little book of restorative justice*. Good Books.

### **B. Optional books,** made available for your further reading if interested:

Crocker, C., Hampson, F., & Aall, P. (1999). *Herding cats: Multiparty mediation in a complex world*. Washington, DC: US Institute of Peace.

Kolb, D. (2001). *When talk works: Profiles of mediators*. Jossey-Bass. Can borrow from instructor also.

### **C. Other required individual articles and chapters:**

All other required readings are stored in a file on one of Conflict Resolution Institute's computers and available for you to copy to your own CD or data key. If you make your own personal copy of these articles, there is no copyright charge. Plan to come in to the Institute during business hours so that you can copy this file of articles. This process has proved to be easier than e-reserve or traditional reserve. **Items marked with (PENROSE) are available electronically through Penrose Library. To find these items search the catalog for the journal title and then follow the link to online access.**

## COURSE OUTLINE

- I. Third Party Intervention: Assumptions, Goals, Processes and Roles
- II. Conflict Analysis and Resolution: General Theoretical Frames
- III. Forms of Mediation
- IV. Victim-Offender 'Mediation' and other Restorative Justice Models
- V. Complexities of International Mediation
- VI. Issues of Directiveness, Power, and Neutrality
- VII. Issues of Culture
- VIII. Values, Motives, Ethics & Competencies

## COURSE SYLLABUS

Topics listed for each week are approximate; certain topics may carry over into the beginning of the next week's session. Readings listed for each week should be completed BEFORE class. Optional readings are also listed in case you have more time to read that week, or would like to pursue a topic further.

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| <b>Jan. 5</b>  | <b>TOPIC</b> | Third Party Intervention: Assumptions, Goals, Processes, & Roles   |
|                | <b>READ</b>  | Moore, Ch. 1, "Approaches to Managing and Resolving Conflict."<br><br>Pruitt & Kim, Ch. 1, "Overview," & Ch. 2, "Nature and Sources of Conflict."<br><br>Ury, Parts I & III (Part II is optional)<br><br><b>Optional:</b><br>Laue, James, "The Emergence and Institutionalization of third-party roles in conflict," in <i>Conflict Management and Problem Solving – Interpersonal to International Applications</i> . Dennis J.D. Sandole & Ingrid Sandole-Staroste, (eds). Chapter 1. pp. 17-29.   |
| <b>Jan. 12</b> | <b>TOPIC</b> | Conflict Analysis and Resolution: General Theoretical Frames<br>~Formation of Case Analysis Teams~   |
|                | <b>READ</b>  | Pruitt & Kim, Ch. 3, "Strategic Choice."<br><br>d'Estrée, T.P. (2002). Dynamics. In Cheldelin, S., Druckman, D., and Fast, L. <i>Human Conflict: From Analysis to Action</i> . London: Cassell.<br><br>Gulliver, P.H. (1979). <i>Disputes and Negotiations</i> . New York: Academic Press. Ch. 1, "The Process of Negotiation," pp. 1-7, 20bottom-24, rest of chapter optional, and Ch. 5, "Processual Model of Negotiation," pp. 121-177.<br><br><b>Optional:</b><br>Black, D. (1984). Social Control as a Dependent Variable. <i>Toward a General Theory of Social Control, Volume 1: Fundamentals</i> . New York: Academic Press. Pp. 1-30. |

Pruitt, D.G., and Kim, S.H. (2004). *Social Conflict: Escalation, Stalemate, and Settlement*. New York: McGraw Hill. Ch. 5-9, on escalation.

Deutsch, M. (2000). Justice and conflict. In M. Deutsch and P.T. Coleman (Eds.), *The Handbook of Conflict Resolution: Theory and Practice* (pp. 41-64). San Francisco: Jossey-Bass.

Burton, J. and Dukes, F. (1990). *Conflict: Practices in Management, Settlement, and Resolution*. New York: St. Martin's Press. "Introduction," Chs. 2, "Mediation," 9, "Adjudication," and 10, "Arbitration".

Nader, L. and Todd, H.F. (1978). *The Disputing Process: Law in Ten Societies*. New York: Columbia University Press. Introduction, pp. 1-40.

Weiss, J. N. (2003). Trajectories toward peace: Mediator sequencing strategies in intractable communal conflicts. *Negotiation Journal*, (April), 109-115. **(PENROSE)**

**Jan. 19**

**TOPIC**

Mediation as Problem-Solving  
Mediation Simulation  
Conflict analysis and resolution quiz

**READ**

Moore, Ch. 2, "How Mediation Works."

Pruitt & Kim, Ch. 10, "Problem-Solving," & Ch. 11, "The Intervention of Third Parties: Mediation," pp. 226-243 (rest of chapter optional).

d'Estrée, T.P. (2008). Problem solving approaches. In Bercovitch, J., Kremenyuk, V., and Zartman, I. W. (Eds.), *Handbook on conflict resolution*. New York: Sage. Subset: pp. 143-148.

**Optional:**

Rest of Moore.

Menkel-Meadow, C. (2006). Why hasn't the world gotten to yes? An appreciation and some reflections. *Negotiation Journal*, 22, 485-503. **(PENROSE)**

Johnson, D. W., Johnson, R. T., and Tjosvold, D. (2000). Constructive controversy: The value of intellectual opposition. In M. Deutsch and P.T. Coleman (Eds.), *The Handbook of Conflict Resolution: Theory and Practice* (pp. 65-85). San Francisco: Jossey-Bass.

**Jan. 26**

**TOPIC**

Mediation as Transformation  
Mediation as Narrative Reconstruction

**READ**

Bush & Folger, Intro., Chs. 1 & 2 (pp.1-84). Ch. 3 optional.

View “Purple House Conversations” videos on Transformative mediation on DU CourseMedia. (Transcript also in Bush & Folger, Chs. 4 & 5.)

Winslade, J., and Monk, G. (2001). *Narrative Mediation: A New Approach to Conflict Resolution*. San Francisco: Jossey-Bass. Ch. 1. Chapters 2 & 3 optional.

[Advance prep: Kolb, D. (2001). *When Talk Works*. Jossey-Bass. Borrow from instructor or check out of library and locate/photocopy the chapters on the mediators of your choice to prepare for discussions next week (not on disc).]

**Optional:**

Burton, J. and Dukes, F. (1990). *Conflict: Practices in Management, Settlement, and Resolution*. New York: St. Martin's Press. Chs. 3-6.

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| <b>Feb. 2</b> | <b>TOPIC</b> | The Many Ways of Mediation<br>~Journal check-in: part I~<br>~First case analysis presentations ~   |
|               | <b>READ</b>  | Kolb, D. (2001). <i>When Talk Works</i> . Jossey-Bass.<br>Read one chapter on a different mediator of your choice and be prepared to discuss different approaches.<br><br>Kolb, D.M., and Kressel, K. (1994). The Realities of Making Talk Work. In Kolb, D.M., <i>When Talk Works</i> . Jossey-Bass. Pp. 459-493.<br><br>Menkel-Meadow, C. (1995). The Many Ways of Mediation: The Transformation of Traditions, Ideologies, Paradigms, and Practices. <i>Negotiation Journal</i> 11, pp. 217-242.<br><br>Bush & Folger, Ch. 7, pp. 237-266. Living with Differences in Values and Practice.<br><br><b>Optional:</b><br>Fiss, Owen (1984). Against Settlement. <i>Yale Law Journal</i> 93 (6), pp. 1073-1090. <b>(PENROSE)</b><br><br><i>Negotiation Journal</i> , (1993). Who Really is a Mediator? Special Section on the Interim Guidelines, 9(4), pp. 293-353.<br><br>For assessment of various forms of mediation:<br>See <i>Conflict Resolution Quarterly</i> , 22, (2004), entire issue.<br><b>(PENROSE)</b> |
| <b>Feb. 9</b> | <b>TOPIC</b> | Victim-Offender ‘Mediation’ and other Restorative Justice Models<br>Guest speaker<br>~First case analysis presentations (cont’d.) ~  |
|               | <b>READ</b>  | Zehr, H. (2002). <i>The Little Book of Restorative Justice</i> . Good Books. Entire pamphlet.  |

Umbreit, M.S., Coates, R.B., & Vos, B. (2004). Victim-Offender Mediation: Three Decades of Practice and Research. *Conflict Resolution Quarterly*, 22, 279-303. **(PENROSE)**

Zehr, H. (2004). Commentary: Restorative Justice: Beyond Victim-Offender Mediation. *Conflict Resolution Quarterly*, 22, 305-315. **(PENROSE)**

**Optional:**

Pranis, K., Stuart, B., & Wedge, M. (2003). *Peacemaking Circles: From Crime to Community*. St. Paul, MN: Living Justice Press. Introduction and Chapter 1, pp. 3-29; Ch. 4, pp. 127-135, on the Circle process.

Zehr, H. (Dec. 1997). Restorative Justice: The Concept. *Corrections Today*, pp. 68-70. **(PENROSE)**

Bazemore, G., and Pranis, K. (Dec. 1997). Restorative Justice: Hazards Along the Way. *Corrections Today*, pp. 84-86, 88-89, 128. **(PENROSE)**

Umbreit, M.S. (1997). Humanistic Mediation: A Transformative Journey of Peacemaking. *Mediation Quarterly*, 14(3), pp. 201-213. **(PENROSE)**

Melton, A.P. (1995). Indigenous Justice Systems and Tribal Society. *Judicature*, 79 (3), pp. 126-133. **(PENROSE)**

**Feb. 16**

**TOPIC**

Complexities of International Mediation

**READ**

Touval, S. and Zartman, I.W. (1989). Mediation in International Conflicts, in K. Kressel and D.G. Pruitt (eds.) *Mediation Research: The Process and Effectiveness of Third-Party Intervention*, San Francisco, CA; Jossey-Bass. (pp. 115-137).

Bercovitch, J. (ed.) (2002). *Studies in International Mediation*. New York: Palgrave Macmillan. Chs. 1, 2, 3, 7, and 12. Good source for cases also.

**Optional:**

Bercovitch, J. (ed.) (2002). *Studies in International Mediation*. New York: Palgrave Macmillan. Ch. 10.

Crocker, C., Hampson, F., & Aall, P. (1999). *Herding Cats: Multiparty Mediation in a Complex World*. Washington, DC: US Institute of Peace. Chs. 1, 2, and 25; see also case chapters.

Jabri, V. (1995). Agency, Structure and the Question of Power in Conflict Resolution. *Paradigms: The Kent Journal of International Relations* 9 (2), pp. 53-70.

Möller, F., DeRouen, K., Bercovitch, J., & Wallensteen, P. (2007). The limits of peace: Third parties in civil wars in Southeast Asia, 1993-2004. *Negotiation Journal*, 23, 373-391.

Princen, T. (1992). *Intermediaries in International Conflict*. Princeton: Princeton Univ. Press. Chs. 3-5. Good source for cases also.

**Feb. 23**      **TOPIC**

Issues of Directiveness, Power and Neutrality

**READ**

Cobb, S. and Rifkin, J. (1991). Practice and Paradox: Deconstructing Neutrality in Mediation, *Law and Social Inquiry* 16, pp. 35-62. **(PENROSE)**

Davis, A., and Salem, R. (1984). Dealing with power imbalance in the mediation of interpersonal disputes. *Mediation Quarterly*, 6, pp. 17-26. **(PENROSE)**

Mayer, B.S. (2004). *Beyond Neutrality*. New York: Jossey-Bass. Chs. 3-4; Ch. 5 recommended.

**Optional:**

Winslade, J., and Monk, G. (2001). *Narrative Mediation: A New Approach to Conflict Resolution*. San Francisco: Jossey-Bass. Ch. 2, if you didn't read it for Jan. 26.

Coleman, P.T. (2000). Power and conflict. In M. Deutsch and P.T. Coleman (Eds.), *The Handbook of Conflict Resolution: Theory and Practice* (pp. 108-130). San Francisco: Jossey-Bass.

Blackburn, J.W., and Bruce, W. M. (Eds.) (1995). *Mediating Environmental Conflicts: Theory and Practice*. Westport, CT: Quorum. Chs. 6, 16. Possible cases.

Bobo, L. (1992). Prejudice and Alternative Dispute Resolution. *Studies in Law, Politics, and Society* 12 (Part A), pp. 147-176.

Dukes, F. (1993). Public Conflict Resolution: A Transformative Approach. *Negotiation Journal* 9, pp. 45-58.

Grillo, T. (1991). The Mediation Alternative: Process dangers for women. *Yale Law Journal*, 100, pp. 1545-1610.

Jameson, J.K. (2001). Employee perceptions of the availability and use of interest-based, right-based, and power-based conflict management strategies. *Conflict Resolution Quarterly*, 19, pp. 163-196. **(PENROSE)**

Stone, J. (1992). Power, Ethnicity, and Conflict Resolution. *Studies in Law, Politics, and Society* 12 (Part A), pp. 89-106.

See also Laue under Jan. 5.

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| <b>March 2</b> | <b>TOPIC</b> | Issues of Culture<br>~Completed Journals due~  |
|                | <b>READ</b>  | <p>Avruch, K. and Black, P.W. (1993). Conflict Resolution in Intercultural Settings: Problems and Prospects, in D.J.D. Sandole and H. van der Merwe (eds.), <i>Conflict Resolution Theory and Practice</i>. Manchester, U.K.: Manchester University Press. (pp. 131-145)</p> <p>Bercovitch, J. (1996). <i>Resolving International Conflicts</i>. Boulder: Lynne Reiner. Ch. 5, "Cultural Aspects of International Mediation" (by Cohen). Pp. 107-125. Book is good for cases also.</p> <p>And <u>one</u> of the following three articles:</p> <p>Wehr, P. &amp; Lederach, J.P. (1991) Mediating Conflict in Central America. <i>Journal of Peace Research</i>, 28(1). Reprinted as Ch. 3 in Bercovitch, J. (ed.), <i>Resolving International Conflicts</i>. Boulder: Lynne Reiner. <b>(PENROSE)</b></p> <p>Barnes, B. E. (1994). Conflict resolution across cultures: A Hawaii perspective and a Pacific mediation model. <i>Mediation Quarterly</i>, 12, 117-133. <b>(PENROSE)</b></p> <p>Barsky, A., Este, D., and Collins, D. (1996). Cultural competence in family mediation. <i>Mediation Quarterly</i>, 13, 167-178. Looks at mediation with Vietnamese and Pakistani families in Canada. <b>(PENROSE)</b></p> <p><b>Optional:</b></p> <p>Blackburn, J.W., and Bruce, W. M. (1995). <i>Mediating Environmental Conflicts: Theory and Practice</i>. Westport, CT: Quorum. Ch. 13, "Assuring Justice in Cross-Cultural Environmental Mediation" (Blackford and Matunga).</p> <p>Faure, G.O., and Rubin, J.Z. (Eds.) (1993). <i>Culture and Negotiation</i>. London: Sage. (available in CRI library)</p> <p>Fry, D. and Bjorkqvist, K. (1997). <i>Cultural Variation in Conflict Resolution</i>. Erlbaum. Ch. 2, "Culture and Conflict Resolution Models" (Fry &amp; Fry), and Ch. 4, "Conflict Life Cycles in Occident and Orient" (Galtung).</p> |
| <b>March 9</b> | <b>TOPIC</b> | Competencies, Values, Motives, and Ethics<br>~Second case analysis presentations~  |
|                | <b>READ</b>  | <p>Association for Conflict Resolution. Ethical Standards of Professional Responsibility. Access at <a href="http://www.acrnet.org/about/initiatives/QualityAssurance/standards-conduct.htm">http://www.acrnet.org/about/initiatives/QualityAssurance/standards-conduct.htm</a>.</p>   |

Colorado Model Standards. Access at  
<http://www.dola.colorado.gov/osg/docs/adrmmodelstandards.pdf>

Laue, J. and Cormick, G. (1978). The Ethics of Intervention in Community Disputes, in G. Bermant, H.C. Kelman, and D.P. Warwick (eds.), *The Ethics of Social Intervention*. Washington, DC: Halsted Press. (pp. 205-232)

Mitchell, C.R. (1988). The Motives for Mediation, in C.R. Mitchell and K. Webb (eds.), *New Approaches to International Mediation*. New York: Greenwood Press. (pp. 29-51)

**Optional:**

Webb, K. (1988). The Morality of Mediation, in Mitchell and Webb. (pp. 16-28)

Burton, J. and Dukes, F. (1990). *Conflict: Practices in Management, Settlement, and Resolution*. New York: St. Martin's Press. Ch. 22.

SPIDR, (1995). Ensuring Competence and Quality in Dispute Resolution Practice. Report No. 2 of the SPIDR Commission on Qualifications. Washington, DC: Author. (25 pp.)

American Arbitration Association, ABA and SPIDR, (1995). Model Standards of Conduct for Mediators. (6 pp.)

Goldberg, S. (2005). The secrets of successful mediators. *Negotiation Journal*, 21, 365-376. **(PENROSE)**

Goldberg, S. B., and Shaw, M. L. (2007). The secrets of successful (and unsuccessful) mediators continued: Studies two and three. *Negotiation Journal*, 23, 393-418. **(PENROSE)**

Wissler, R. (2006). The role of antecedent and procedural characteristics in mediation: A review of the research. In M. Hermann, Ed., *Handbook of Mediation*. Malden, MA: Blackwell.

**March 12**

**FINAL CASE PAPERS DUE**