

# **MEDIATION AND OTHER METHODS TO FOSTER DEMOCRATIC DIALOGUE**

Central European University, Budapest 2002

Benjamin Cardozo School of Law and Hamline University School of Law  
*Professors James R. Coben, Kinga Goncz, Lela P. Love, Joseph B. Stulberg*

July 22, 2002, Monday

9:00-10:30     **Introduction and Course Overview**  
                  **Principles of Dispute Settlement**

Lecture and general discussion examining assumptions about dispute settlement, analyzing various dispute settlement methodologies, and exploring the role of mediation within that context.

10:30-10:45    BREAK

10:45-12:15   **The Voluntary Resolution of Disputes**

Group exercise designed to illuminate the principles and dynamics underlying voluntary dispute settlement procedures. The nature of the outcome, the importance of structuring the process, the role of information, preferences and priorities, the rationale of establishing trade-offs, the difference between interests and positions, and the facilitators and inhibitors of consensus-building will be stressed in the analysis.

12:15-1:30     LUNCH

1:30-2:10      **The Shift from Communism Towards the Rule of Law in  
Central and Eastern Europe: a Role for Mediation**

*Professor Csilla Kollonay Lehoczky*

3:00-3:30      Computer Lab Tour

A tour of and introduction to services and facilities available in the computer lab.

reading:        Getting to Yes, Fisher, Ury and Patton

2 and 3         Taking Charge/Managing Conflict, Stulberg, pp. 5-27, Chapters  
                  handouts for Day 1:

- >*Images of Justice*, Love, 1 PEPPERDINE DISPUTE RES. J. 29 (2000)
- >*Dispute Resolution Processes*, from CONDUCTING THE MEDIATOR SKILL-BUILDING TRAINING PROGRAM, Stulberg and Love (Michigan Supreme Court 1997)
- >*Constructive Responses to Conflict in Emerging Democracies*, Shonholtz, PARTNERS FOR DEMOCRATIC CHANGE/UNDP CONFERENCE PAPER (2-14-01)
- >*Intervenor Orientations & Related Tasks and Outcomes*, chart from *Mapping Mediation*, Kovach and Love, 3 HARV. NEG.

assignment: **cross-cultural interviews.**

Working in pairs (with a student from another country), students will interview each other to determine: the dominant (default) method of conflict resolution in their partner's family of origin, place of employment, school or community. Each student should give concrete examples of specific disputes and their resolution and should prepare a summary description (maximum of 500 words/approximately 2 typewritten pages, double-spaced and using standard fonts and margins) of one of your partner's disputes, including the method of conflict resolution used, the interests at stake, the positions taken by each party, and the resolution achieved. [The written assignment is due in class on Friday, July 26.](#)

July 23, 2002, Tuesday

9:00-10:15 **The Mediator at Work**

A demonstration of how a mediator works to resolve a dispute.

**Overview of Mediation**

An examination of the various functions the mediator fulfills and the types of traits/interpersonal skills required of the persons discharging these functions.

10:15-10:30 BREAK

10:30-12:15 **Beginning the Mediation Conference**

An examination of the impact of different seating arrangements. Participants will examine the components of an opening statement. Interpersonal skills with regard to eye contact, language use, and creating a structured but comfortable environment will be the focus of the analysis that follows.

12:15-1:30 LUNCH

1:30-2:10 **Collaborative Processes in Former Communist Countries**

*Professor Kinga Goncz*

reading: [Taking Charge/Managing Conflict](#), Stulberg, pp. 31-68, Chapters 4, 5 and 6  
handouts for day 2:

->*Mediator Orientations, Strategies and Techniques*, Riskin, ALTERNATIVES (1994)

->*Applying Collaborative Processes in Former Communist Countries*, Goncz and Shonholtz, IAP2 (First Quarter 2000)

assignment: **movie–Qiu Ju** (approximately 100 min.)

After viewing *Qiu Ju*, write an analysis of the meaning of justice as perceived both by you and by Qiu Ju. Did either mediation or litigation help secure a “just” outcome? Why or why not? (maximum of 500 words/approximately 2 typewritten pages, double-spaced and using standard fonts and margins). [The written assignment is due in class on Monday, July 29.](#)

3:00-4:00 Library Tour

A tour of and introduction to services and facilities available in the CEU library.

July 24, 2002, Wednesday

9:00-1:10 **Accumulating Information and Listening Constructively**

Demonstration and analysis focusing on fact-gathering techniques, note-taking skills, and questioning skills.

Interactive exercises will illuminate the task of translating hostile and adversarial communication into building blocks of collaborative dialogue.

**Framing Interests and Issues to Construct the Agenda**

Lecture and discussion examining the mediator's role in, and responsibility for, identifying, framing and ordering the issues in dispute. Exercises will follow.

(two 15-minute breaks will be scheduled into the morning)

reading: Taking Charge/Managing Conflict, Stulberg, pp. 69-94, chapters 7 and 8  
handouts for Day 3:

->*Training Mediators to Listen*, Love, 38 FAMILY AND CONCILIATION COURTS REVIEW 27  
(2000)

July 25, 2002, Thursday

9:00-10:30 **Dealing Effectively with Diversity**

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

10:30-10:45 BREAK

10:45-12:15 **Mediator Strategies for Generating Settlement**

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

12:15-1:30 LUNCH

1:30-2:10 **Exploration of Dynamics and Issues in a Multi-Party, Multi-Ethnic Dispute**

A case study focusing on managing diverse components of multi-party disputes, from pre-negotiation arrangements through post-settlement closure.

2:30 TOUR OF PARLIAMENT

reading: Taking Charge/Managing Conflict, Stulberg, pp. 95-106, chapter 9  
handouts for day 4:

->*Mediation as Parallel Seminars: Lessons from the Student Takeover of Columbia University's Hamilton Hall*, Liebman, 16 NEGOTIATION JOURNAL 157 (April 2000)

->*Intercultural Communication and the Organizing Facets of Culture*, Dodd, DYNAMICS OF INTERCULTURAL COMMUNICATION, 36-45 (Brown and Benchmark 1987)

->*Cultural Assumptions About Conflict*, from MEDIATION SKILLS TRAINING MANUAL (Mediation Center for Dispute Resolution 2001)

->*Ruminations on the 'Culture' of Law: Recognizing an Inevitable Influence on the Evolution of Dispute Resolution Alternatives*, Coben, Volume 2, No. 1 JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION IN EMPLOYMENT 4 (Spring 2000)

July 26, 2002, Friday

9:00-1:10      **Considerations and Strategies in Dealing with Complex, Multi-Ethnic Cases**  
Professors will "accompany" participants through a conflict analysis to determine the propriety and nature of a mediation intervention in a multi-party, multi-ethnic community conflict. Elements of the analysis will include: party identification; ripeness for intervention; mediator qualifications relevant for effective service; and pre-dispute entry issues and responsibilities. In small groups, participants will analyze a case study to develop performance skills for conducting a multiparty mediation. Elements of the analysis will include: structuring the sessions, capitalizing on role of advocates and spokespersons, planning considerations when cultural diversity is present, and using translators effectively.  
(two 15-minute breaks will be scheduled into the morning)

reading:        handouts for Day 5:  
                  ->*Ethnic Minorities in Hungary: Democracy and Conflict Resolution*, Goncz and Gesko, 552 ANNALS OF THE AM. ACADEMY OF POL. AND SOC. SCI. 28 (July 1997)  
                  ->*A Tale of Two Cities*, Love and McDonald, DISPUTE RESOLUTION MAGAZINE (Fall 1997)  
                  ->*Multi-Party Public Policy Mediation*, Susskind, DISPUTE RESOLUTION MAGAZINE (Fall 1997)

July 28, 2002, Sunday BOAT TRIP TO SZENTENDRE (optional)

July 29, 2002, Monday

9:00-11:00      **Meeting Separately with the Parties**  
Examination of the purposes and strategies of meeting in caucus sessions with the parties. Participants will assume either the mediator's or a party's role and conduct a caucus. Analysis will follow.

11:00-1:10      **Co-Mediation Orientation**  
Discussion and analysis of strengths and weaknesses of a co-mediation approach and the principles guiding the effective execution of team mediation. Practice will follow.  
(two 15-minute breaks will be scheduled into the morning)

reading:        Taking Charge/Managing Conflict, Stulberg, pp. 107-122, chapter 10  
                  handouts for day 6:  
                  ->*Practice Guidelines for Co-Mediation: Making Certain That "Two Heads Are Better Than One"*, Love and Stulberg, 13 MEDIATION QUARTERLY 179 (Spring 1996)

July 30, 2002, Tuesday

9:00-1:10      **Facilitation Skills and Techniques to Foster Democratic and Constructive Dialogue**  
An examination of the relationship between facilitation and mediation and of the

tasks and tools used by facilitators. Practice will follow.  
(two 15-minute breaks will be scheduled into the morning)

reading: handouts for day 7:  
->*Basic Facilitation Skills for Mediators*, Zumeta and Fleischer (1998)

2:30 TOUR OF COURTS

July 31, 2002, Wednesday

9:00-1:10 **Bringing Closure to the Session**  
Discussion and exercises regarding the procedure for and components of the construction of a mediation agreement. Strategies for effectively closing a session will be explored and practiced.

**Writing an Effective Agreement**

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

(two 15-minute breaks will be scheduled into the morning)

reading: Taking Charge/Managing Conflict, Stulberg, pp. 123-133, chapter 11  
handouts for day 8:  
->*The Mediating Future*, Shonholtz, 552 ANNALS OF THE AM. ACADEMY OF POL. AND SOC. SCI. 139 (1997)

August 1, 2002, Thursday

9:00-1:10 **Ethics in Mediation**  
Discussion and exercises focusing attention on ethical dilemmas faced by mediators, particularly challenges to a mediator's impartiality, and the potential for abuse of discretion and power.

**Mediation Review**

A critical review of a mediation session.

**Building A Career in Dispute Resolution**

*Guest Lecturer: Dana Potockova*

(two 15-minute breaks will be scheduled into the morning)

Working Lunch (optional): informal discussion and advice regarding study and business-building opportunities in the field of conflict resolution.

reading: Taking Charge/Managing Conflict, Stulberg, pp. 137-168, chapter 12 and conclusion  
handouts for day 9:  
->*Model Standards of Conduct for Mediators* (1994)  
->*Uniform Mediation Act* (June 5, 2001 Draft for Approval); and comments by the Minnesota State Bar Association (January 28, 2001 and April 9, 2001)

- > *Misrepresentation in Mediation: Efficacy, Expectations, and Ethical Norms*, Coben ,  
Volume 2, No. 3 JOURNAL OF ALTERNATIVE DISPUTE  
RESOLUTION IN EMPLOYMENT 4 (Fall 2000)
- > *Mediation's Dirty Little Secret: Straight Talk About Mediator Manipulation and  
Deception*, Coben, Volume 2, No. 4, JOURNAL OF ALTERNATIVE DISPUTE  
RESOLUTION IN EMPLOYMENT 4 (Winter 2000)
- Recommended but not required
- > *CPR Georgetown Commission on Ethics and Standards in ADR, Rule 4.5.4*  
(Conflict of Interest )(April 1999)

August 2, 2002, Friday

9:00-1:10      **Mediation Simulations**

Participants will conduct a complete mediation conference, beginning with the opening statement and concluding with the written agreement. Both participants and professors will provide feedback to the mediator. Analysis will follow completion of each simulation.

**Reflections and Closure**

(two 15-minute breaks will be scheduled into the morning)

2:30-4:30      Final paper. Students will write an in-class, open-book analysis of their final mediation simulation in which they served as the mediator.

preparation:    Review mediator training material.

COMPLETION REQUIREMENTS AND GRADES:

For all students, class attendance is mandatory.

For CEU students who are not taking the course for a grade, completion of the program requires that two of the three writing assignments must be submitted.

For students taking this course for a grade, grading will be based on the following:

10% Class attendance and participation. Attendance at all sessions is expected.

90% Written assignments: cross-cultural interview (25%); reflections on justice in *Qiu Ju* (25%); and final paper based on the mediation simulation (40%).