The Handbook of Dispute Resolution

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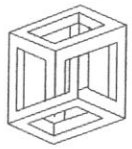
Editors



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82. See English and Neilson, "Certifying Mediators," 2004.
83. English and Neilson, "Certifying Mediators," 2004, p. 484.
84. See English and Neilson, "Certifying Mediators," 2004, pp. 492–498.
85. English and Neilson, "Certifying Mediators," 2004, pp. 484–485.
86. Waldman, "Credentialing Approaches," 2001, p. 16.
87. See The Test Design Project, *Performance-Based Assessment: A Methodology for Use in Selecting, Training and Evaluating Mediators* (Washington, D.C.: National Institute for Dispute Resolution, 1995).
88. Menkel-Meadow, "When Dispute Resolution Begets Disputes of Its Own," 1997, p. 1912.
89. R. Dingwall, "Divorce Mediation, Market Failure and Regulatory Capture," in G. Hanlon and S. Halpern (eds.), *Liberating Professions, Shifting Boundaries* (Institute for the Study of the Legal Profession, Sheffield, U.K.: University of Sheffield, 1997), p. 43.
90. See Mosten, "Institutionalization of Mediation," 2004; and English and Neilsen, "Certifying Mediators," 2004.

CHAPTER THIRTY-ONE

The Next Thirty Years

Directions and Challenges in Dispute Resolution

Robert C. Bordone, Michael L. Moffitt, and Frank E. A. Sander

As Carrie Menkel-Meadow observed in her chapter in this volume, disputes are as old as humankind and dispute resolution is only a bit younger.[1] Yet dispute resolution has only recently become the focus of formal academic and professional exploration. Thirty years ago, virtually no law schools, business schools, or policy schools offered classes in mediation or negotiation. One could find no centers for the study of conflict management and no degree programs in peace studies or dispute resolution. Indeed, few courts encouraged the use of nonlitigious forms of dispute resolution or had programs to support them.

Just thirty years after Frank Sander proposed the multidoor courthouse at the Pound Conference,[2] the landscape for dispute resolution has changed dramatically. Today, dispute resolution courses are offered in virtually all professional schools. Research centers at major universities now facilitate the development of knowledge and the application of knowledge to real-world problems. A substantial and growing number of undergraduate and professional schools now offer separate degrees focused on dispute resolution and conflict management. And more than thirty states have established separate offices of dispute resolution.[3] Given the tremendous growth of dispute resolution as a field during recent decades, there is much to celebrate.

At the same time, dispute resolution's evolution as a field is far from complete. Its reach into the worlds of practice and education is still incomplete. Advances in our understanding of dispute resolution have not reached as broad

an audience as they should. Most students navigate their educational careers—from elementary school right through graduate and professional degree programs—without ever receiving formal training in dispute resolution. Those who do study dispute resolution, and who wish to pursue it as a career, continue to find that there are few entry points into the field and even fewer full-time job possibilities.

Furthermore, as an academic discipline, dispute resolution is at something of a crossroads. The "intellectual founders" of the modern dispute resolution movement are no longer the only voices in the field. The moment when inspirational founders of a movement or institution pass their work, energy, ideas, and vision to others is critical. It is a moment of testing: Has a new and legitimate movement or field emerged? Or was the excitement misplaced, a fortuitous but coincidental confluence of charismatic individuals postulating attractive ideas at a ripe moment in history? Will the addition of new voices build upon, strengthen, and broaden the initial endeavor? Or will the founders' visions slowly ossify, lose energy, and fade?

We have great hope that dispute resolution—both as an academic discipline *and* as a growing career opportunity for professionals—is here to stay. The work encapsulated in this volume represents more than a mere blip on the intellectual radar screen. And yet, the field's evolution is not complete. Over the next thirty years, important opportunities and challenges are sure to arise. In this chapter, we survey four questions that we expect will drive much of the agenda for those in the dispute resolution field:

- *How can we best respond to those who have voiced concerns with the application of dispute resolution principles?* Not everyone is enthusiastic about the recent expansion of dispute resolution. Consistent with the very principles underlying the effective management of differences, we need to understand better their concerns and develop appropriate responses.
- *How can we best address private resistance to dispute resolution in the world of practice?* For dispute resolution to fulfill its promise, scholars, practitioners, disputants, and the general public must benefit from effective transfer of knowledge. We must also identify and overcome the obstacles facing those who seek to apply the ideas in practice.
- *How can we build bridges between the various disciplines working on questions of dispute resolution?* The field is interdisciplinary by nature, and many of the most promising developments demand greater cross-disciplinary collaboration and greater cross-disciplinary utilization of knowledge and resources.
- *How can we develop new knowledge about dispute resolution processes?* Dispute resolution rests on an important set of hypotheses about how disputants, dispute contexts, and various dispute resolution mechanisms interact. Yet we know less about each of these than we would prefer.

Many professionals ought to have a deep understanding of dispute resolution—but only some have such an understanding. Despite the advances of dispute resolution over the past thirty years, most lawyers, businesspersons, and government officials still have no formal exposure to or understanding of the various processes of dispute resolution. In the face of conflict, these individuals, depending on the context, are apt to choose between lumping it, litigating it, or fighting it out. How many corporate executives understand disputants' cognitive biases? How many lawyers can nimbly apply problem-solving approaches to create value? How many government leaders appreciate the panoply of processes for managing differences?

A scan of the newspapers shows workers and managers locked in escalating battles over diminishing resources, lawyers doggedly pursuing scorched-earth litigation tactics in the face of overwhelming pressures to settle, and politicians promising not to negotiate with their enemies. Indeed journalists have an incessant tendency to characterize disputes in binary, win-lose terms in ways that cloud dispute resolution opportunities. There is much evidence that dispute resolution has not taken hold as broadly as some in the field would prefer.

Why not? And what can be done about it?

CHALLENGE ONE: RESPONDING TO THOSE WHO HAVE VOICED CONCERN WITH DISPUTE RESOLUTION

Not all observers applaud the recent "successes" of dispute resolution. For example, there are some who worry that the growth of mediation and other nonpublic dispute resolution processes wrongly privatizes disputing. They argue that the increase in settlement rates prevents courts from serving important functions, including the adjudication of rights and the articulation of legal norms.[4] Some have criticized "negotiated rulemaking" (a process by which stakeholders in the promulgation of a federal rulemaking come together to negotiate the terms of a federal regulation). These critics worry that government officials may fail to protect zealously the public interest as they negotiate collaboratively with the very corporate interests that they are charged with regulating. This dynamic is called "agency capture."[5] Still others worry that dispute resolution processes might be applied in contexts in which they are inappropriate. For example, some have voiced concerns that mediation in certain contexts of power imbalance may fail to protect against unjust or even exploitative outcomes.[6] Others have criticized the expansion of arbitration beyond its

traditional boundaries into areas of questionable consent.[7] Still others have argued that the use of mediation in sexual harassment cases in the workplace is inappropriate because it risks trivializing the seriousness of the violation.[8] Finally, some have voiced concerns that informal dispute resolution processes may disadvantage minority participants and others who hold less structural power.[9]

For the most part, we concur with the basic spirit of these concerns. We believe dispute resolution processes must be tailored to the nature of the dispute. And we would say the same about all dispute resolution processes—whether adjudicative or not.

We do not count ourselves as unqualified dispute resolution imperialists. Some in our field seem to insist that all disputes should be resolved through consensual means without resort to litigation. We think this misunderstands the promise of appropriate dispute resolution. Those who overpromise when "selling" dispute resolution decrease its legitimacy. Those who march forward with particular processes, even when contraindications against their use are present, do a disservice to the field.

At the same time, we believe that those who have written against the dispute resolution movement have often overstated their arguments. In most cases, they reflect an oversimplified understanding of the application of dispute resolution principles to complex problems.

Part of what we need is an improved dialogue about dispute resolution processes, their promise, and their pitfalls. We need conversations, rather than polemics. We need nuanced analyses, careful examinations of real-world experiences, and a welcoming of a range of perspectives into what should be an ongoing collective effort to find the best ways to manage our differences. And we see signs of hope that these conversations are beginning.[10]

Another piece of the puzzle lies with educators. Quality instruction about dispute resolution processes must also include an appreciation for how one *diagnoses* a dispute. A surgeon who knows how to operate on kidney stones, but who cannot diagnose when this surgery is appropriate, is more dangerous than helpful.

We should situate our field, working to clarify that dispute resolution is an umbrella that encompasses the full range of mechanisms for resolving differences. A thorough study of dispute resolution must include an appreciation for traditional rights-based models (such as litigation or arbitration) in addition to models focused on nonadversarial approaches. And it should recognize that disputes do not take place against a blank slate. It is not enough to imagine what processes *should* exist, if no background processes were already in place. Early efforts simply to graft dispute resolution onto existing rights-based structures have produced as many challenges as successes. These challenges mount as one considers the myriad cultures and contexts into which dispute resolution

mechanisms have been thrust. A complete understanding of dispute resolution requires knowing what processes work best *in the context* faced by the disputants.

CHALLENGE TWO: ADDRESSING PRIVATE RESISTANCE

Not all who resist dispute resolution do so through open, principled opposition to one or more of its foundational ideas. Instead, many engage in what we term "private" resistance. Many in this category publicly support various forms of collaborative dispute resolution, while at the same time they privately fail to modify behavior or take steps to ensure that wise processes are applied in each dispute.

The reasons for such resistance are many and varied. For some, the invitation to act beyond the comfort zones of their traditional practice feels threatening; for others high-quality training programs are not readily available; still others may think that learning about dispute resolution processes is a good idea, but because of hectic schedules, it never becomes a priority that they can get around to.

In some cases, parties' private resistance to dispute resolution ideas stems from their perceptions about what they stand to gain. A company believes it is relatively "powerful" and can extract concessions out of a counterpart by engaging in adversarial tactics. Why should it refrain from doing so? Unless it believes that it stands to gain even more by expanding the value to be divided, the company is likely to resist any adaptation in the process by which it seeks to resolve the dispute. This dynamic is exacerbated when one introduces agents into the equation—agents who may have interests that are well-served in the existing dispute resolution mechanisms. And agency problems are not limited to outside professionals such as lawyers. In many companies a settlement is charged to the budget of that division, but litigation costs are not charged to the department. This creates an incentive to division managers to litigate even if it makes no sense from a larger corporate perspective.[11] In short, if disputants do not see value in the change, they will not change—even if they would not admit it publicly.

Part of the answer to this dilemma lies in education. Training in dispute resolution should be commonplace—if not mandatory—in professional schools. The decision makers of tomorrow should make dispute resolution choices based on a thorough understanding of their options. Moreover, dispute resolution education should not be limited to professional academies. Dispute resolution programs in elementary and high schools are particularly promising. Such programs give students skills that are transferable from the school to a whole host of other critical contexts. Indeed, the skills and insights embedded in quality dispute resolution programs may be of even more use to those who are not destined to occupy the positions of greatest authority.

Another piece of the response to this challenge ought to rest in a more compelling, effective set of stories and images. Popular perceptions are more frequently shaped by vivid accounts of a single transaction than by broad empirical surveys. As it now stands, stories of war, of intense litigation, and of winner-take-all showdowns saturate the media.[12] With rare exceptions (for example, Ken Feinberg's work administering the 9/11 Fund), stories of successful problem-solving dispute resolution are covered, if at all, only on the back pages of the *New York Law Journal.* For dispute resolution to gain traction outside the academy, we must identify and publicize stories in which organizations and individuals chose wise dispute resolution strategies. We need stories in which parties with apparent "power" realized even greater value through creative problem solving than they would have through traditional means of dispute resolution. Examples are out there. Companies such as Toro Motors, Johnson & Johnson, E.I. du Pont de Nemours and Co., Georgia-Pacific Corp., Bridgestone/Firestone, General Electric Co., and Motorola[13] have adopted settlement-friendly dispute resolution programs that save them millions of dollars each year.[14] If we are to succeed in efforts to reduce resistance to dispute resolution, our field must make more concerted efforts to promote stories of effective, wise dispute resolution.

The field will also continue to need intellectual leaders at prominent institutions. At least part of the credibility of the early claims regarding dispute resolution stemmed from the sources of the ideas. Leadership from high-profile professors at leading universities was critical to attracting the attention of practitioners, corporations, funders, and policymakers. These institutions are uniquely placed to disseminate knowledge more broadly to the outside world of practice. If dispute resolution is to succeed in disseminating information to the broader community, prominent civic institutions must remain the centers of thinking and research in dispute resolution. Part of the challenge, therefore, lies with these institutions, in figuring out how to build and maintain such efforts. And part of the challenge lies with the field, in figuring out how to persuade these prominent institutions of the need for such endeavors. The 2003 decision of the Hewlett Foundation to cease its funding of dispute resolution theory centers at prominent American universities only adds to the urgency of those in the field to promote the need for continued funding and research.[15]

Similarly, dispute resolution will be enhanced enormously when we begin to see scholars from the field ascend to positions of importance in their educational institutions. Consider the exciting opportunities a law school might create for faculty and students if it appointed a dean with a background in *multiple* forms of dispute resolution. If the chair of a department were trained in dispute resolution, what rich interdisciplinary opportunities would she or he be likely to create for younger colleagues and students?

Finally, just as dispute resolution will need intellectual champions from within the academic community, it will need prominent figures from within the world of practice to encourage its continued growth.[16] Organizations such as the CPR Institute for Dispute Resolution, the ABA Section on Dispute Resolution, and business groups have an opportunity to educate a broader audience than do most academics. Prominent judges can educate members of the bar and the public in unique and important ways.[17] Government officials and policymakers can shape the environment in which disputes are addressed.[18] Legislators, civic leaders, clergy, and a host of other figures are poised to improve the lives of so many, through the application of wise dispute resolution principles.

CHALLENGE THREE: BRIDGING THE CROSS-DISCIPLINARY GAP

One of the greatest attractions of dispute resolution as a field is its interdisciplinary nature. No single discipline has a lock on or monopoly in the field.[19] The contributions in this volume serve to bring home this point. Unfortunately, more often than not, theorists and researchers are unaware of each other's work. A 2004 report commissioned by The William and Flora Hewlett Foundation by Robert A. Baruch Bush found that even scholars working along related lines in the same institution or field often were completely unaware of each other's work.[20] Indeed, every contributor to this volume is virtually certain to find brand new ideas in these pages—ideas captured by others in other disciplines. Opportunities for cross-disciplinary fertilization are still too rare in our field.[21]

Cross-disciplinary work is not easy. Established academic disciplines such as economics, psychology, sociology, and law have each contributed to our understanding of dispute resolution. Yet each has its own highly specialized terminology, peer review standards, and research traditions. This challenge is exacerbated by structural limitations within most universities that speak glowingly of cross-disciplinary collaboration, only to enact policies and procedures that fail to encourage it.

In very few institutions, for example, would an untenured professor in one department or school be encouraged to undertake joint work with a faculty member in another discipline. Not only would the resulting work be coauthored (a negative in many academic settings), but also it would invariably have at least some of the scholarly trappings of the "other" discipline. For relatively junior academics, therefore, cross-disciplinary work is a challenge. And the challenge is not limited to those facing the prospect of tenure review. Departments, schools, universities, and the broader academic community are accustomed to rewarding a particular vein of specialized research. Cross-disciplinary work has a hard time fitting into that model.

Many of the most important advances in our field have come through the collaborative efforts of individuals who came to dispute resolution through different avenues. Cross-disciplinary work involving law, economics, psychology, organizational behavior, and sociology has been invaluable. And much more can be done within each of these fields. However, if dispute resolution is to make the impact it should, dispute resolution theorists will need to follow their own advice and capitalize on their own differences in resources and capabilities by forging productive working relationships.

One important development toward this end has been the establishment of university research centers or projects for the study of negotiation and dispute resolution. These research centers are no panacea, yet they have been instrumental in bridging the gap between disciplines. With strong faculty leadership from various departments and schools within a university, research centers can provide forums to expose faculties to the work of their colleagues. Moreover, such centers can fund cutting-edge collaborative work by those who aspire to study and teach dispute resolution. Finally, the existence of such programs helps to facilitate fortuitous meetings of faculty who may not ever otherwise meet each other. These meetings can result in spontaneous collaborations between colleagues who do similar work in parallel, nonintersecting disciplines.

An even more promising development is found in the emergence of degree programs in dispute resolution, peace studies, or conflict management. The faculty for such programs is now drawn from other academic departments. One need not imagine this as a permanent condition, however. Perhaps we are not so far removed from the day when universities will have faculties in Dispute Resolution Studies. Perhaps one day the home department for these faculty members will be Dispute Resolution, rather than Economics, or Psychology, or Law. The tenure review process in such a department would probably *demand* (rather than merely tolerate) cross-disciplinary work.

Needless to say, those in the field of dispute resolution ought not to hold their collective breath for such developments within the academy. It may be many years before these developments come to fruition. It may be multiple generations. And it may never come to pass in the form we have described. What is important is that we consider ways to encourage the kinds of cross-disciplinary collaboration that are so critical to the continued development of our field.

CHALLENGE FOUR: DEVELOPING NEW KNOWLEDGE

We know more than we used to about dispute resolution—and we know less than we need to.

There seem to be almost limitless areas in which we need further research. No one could hope to provide an exhaustive list of topics worthy of further study. Our ignorance is so profound that we probably do not even know what we do not know. In this section, we identify a few of the research areas we think are most promising—areas in which dispute resolution scholars and practitioners have the most to gain from one another.

Quantification of the Costs and Benefits of Dispute Resolution

One of the foremost challenges for dispute resolution researchers in the years ahead will be to quantify the costs and benefits of various approaches to dispute resolution. Funding for dispute resolution programs is down significantly across the nation.[22] In an age of cost-cutting, companies are reevaluating high-priced internal training programs. More and more, those who advocate for dispute resolution programs are being asked to defend continued funding by showing actual cost savings and value. Unfortunately, there is a serious dearth of rigorous evaluative data.[23] As we move forward, anecdotal data and interesting stories will be insufficient to win funding in an age of ever-growing demand for resources.

Multiparty Dispute Resolution

There is an enormous amount of work to be done with respect to building a robust theory and practice of multiparty dispute resolution. Few disputes in modern days involve only two parties, yet very little empirical research has been done relating to multiparty disputes. As Howard Raiffa observed in *The Art and Science of Negotiation*, "There is a vast difference between conflicts involving two disputants and those involving more than two disputants."[24] During the past few years several law schools, including Harvard, Georgetown, and Stanford, have begun to offer advanced classes on multiparty negotiation. While some scholarly work has been done in this area, we still do not have a parsimonious and useful model for understanding multiparty disputes.[25]

Role of Culture

As Anthony Wanis-St. John appropriately asserts in his chapter on culture in this volume, researchers in dispute resolution have largely downplayed the role of culture in the resolution of disputes.[26] Understanding how cultural differences influence disputes—and how they can be used to improve the processes of dispute resolution—has become even riper for research in the post-9/11 world. As it now stands, the role of culture as a construct and influence in conflict, though recognized as important, is virtually unexplored.[27]

Role(s) of Emotions

No one with experience in dispute resolution would deny that emotion plays a role. Yet until very recently, scholars have offered relatively little helpful advice to those who engage in dispute resolution regarding the roles of emotion.[28] The

best answer surely is not "Don't get emotional," nor is it to say simply, "Manage your emotions." We hope that with time, researchers will develop a richer understanding of the ways that shame, anger, hope, and fear affect disputants. And we hope that scholars will find vehicles for translating these findings into advice that will be useful to practitioners.

Effective Teaching Pedagogies

Because dispute resolution is essentially interdisciplinary in nature, the challenge for an instructor teaching dispute resolution is enormous. Effective teachers of dispute resolution in professional programs need to have a basic level of proficiency in many areas in order to teach dispute resolution successfully. Despite the tremendous growth in the number and type of dispute resolution classes, we have relatively little information about the kinds of pedagogies that are most likely to result in students actually developing transferable dispute resolution skills. Some negotiation scholars have begun to study empirically the kinds of negotiation teaching pedagogies that are most effective in the teaching of dispute resolution.[29] As the demand for dispute resolution instruction explodes, both in professional schools and in the professional world, the field needs to learn what teaching pedagogies and styles are most effective in helping learners transfer theoretical knowledge to practice.

CONCLUSION

We admit that we are not neutral observers of this field. And still, we believe that dispute resolution may be the most exciting place to be right now.

The field is at a crossroads, providing fertile opportunity for those who seize it to shape the course of its development. Dispute resolution is in the midst of an enormous exploration of the possibilities and limits of translating theory into practice—and practice into theory. The field calls, therefore, for ambassadors in the world of government, business, and civil society who can advocate for the principles of dispute resolution and who can effectively spread the word about the effectiveness of dispute resolution in resolving disputes and better managing conflict. Paradoxically, as the field becomes more institutionalized, it must simultaneously guard against a dilution of the idealism, vibrancy, and flexibility that inspired its birth and initial attraction.

Dispute resolution faces the unique challenge of creating an independent space for itself alongside traditional academic disciplines such as economics, psychology, and sociology. At the same time, the field itself must bridge the cultural and language gaps that exist between these fields and develop its own, unique, and crosscutting disciplinary language.

To these elements that make ours a most exciting and dynamic field, we add a final element: urgency. At the start of the twenty-first century, the question of how we human beings manage and resolve our differences—how we manage and resolve our disputes—is of central importance. The need for the work of dispute resolution scholars and practitioners in all sectors of society has never been greater. Force and the threat of force are the least elegant, most destructive, most costly, and most alienating of dispute resolution mechanisms. And yet the use of force is becoming more commonplace on both the international and domestic fronts. Even when force is averted, there is an increasing tendency toward polarized, zero-sum rhetoric regarding some of our most important differences. Technology and the realities of modern life bring us into more frequent contact with those from whom we are different, either by virtue of race, culture, creed, education, class, or viewpoint. To survive, we must manage those differences with skill.

Our field has an urgent mandate. If we act with congruence—walking the talk—we have an opportunity to learn from each other, to teach each other, and to improve the ways in which those with differences interact.

Notes

1. See Menkel-Meadow, Chapter Two, this volume.
2. See F.E.A. Sander, "Varieties of Dispute Processing," *Federal Rules Decisions*, 1976, *77*, 111–123.
3. See L. P. Senft and C. A. Savage, "ADR In the Courts: Progress, Problems, and Possibilities," *Penn State Law Review*, 2003, *108*, 327–348.
4. See O. Fiss, "Against Settlement," *Yale Law Journal*, 1984, *93*, 1073–1090; J. Resnik, "Many Doors? Closing Doors? Alternative Dispute Resolution and Adjudication," *Ohio State Journal On Dispute Resolution*, 1995, *10*, 211–265; and L. Nader, "Controlling Processes in the Practice of Law: Hierarchy and Pacification in the Movement to Re-Form Dispute Ideology," *Ohio State Journal on Dispute Resolution*, 1993, *9*(1), 1–26.
5. S. Rose-Ackerman, "Consensus Versus Incentives: A Skeptical Look at Regulatory Negotiation," *Duke Law Journal*, 1994, *43*, p. 1216.
6. See, for example, T. Grillo, "The Mediation Alternative: Process Dangers for Women," *Yale Law Journal*, 1991, *100*(6), 1545–1610.
7. Jean Sternlight has written extensively on the perils associated with the rise of arbitration. See J. Sternlight, "Mandatory Binding Arbitration and the Demise of the Seventh Amendment Right to a Jury Trial," *Ohio State Journal on Dispute Resolution*, 2001, *16*, 669–733.
8. See M. Irvine, "Mediation: Is It Appropriate for Sexual Harassment Grievances?" *Ohio State Journal on Dispute Resolution*, 1993, *9*, 27–52.

9. Ian Ayres has conducted some of the most interesting research on this topic. See, for example, I. Ayres, "Further Evidence of Discrimination in New Car Negotiations and Estimates of Its Cause," *Michigan Law Review*, 1995, *94*, 109–147; and I. Ayres, "Fair Driving: Gender and Race Discrimination in Retail Car Negotiations," *Harvard Law Review*, 1991, *104*, 817–872.
10. See, for example, C. Menkel-Meadow, "When Litigation Is Not the Only Way: Consensus Building and Mediation in Public Interest Lawyering," *Washington University Journal of Law and Policy*, 2002, *10*, 37–61; and J. Seul, "Settling Significant Cases," *Washington Law Review*, 2004, *79*, 881–967.
11. See F.E.A. Sander, "The Future of ADR," *Journal of Dispute Resolution*, 2000, pp. 3–10.
12. See Sander, "The Future of ADR," 2000.
13. See, for example, R. H. Wiese, "The ADR Program at Motorola," *Negotiation Journal*, 1989, *5*, 381–394.
14. See A. Jones, "Bullish on Settling." [http://www.law.com/jsp/article.jsp?id=1095434457836]. September 24, 2004.
15. See Hewlett Foundation. [http://www.hewlett.org/Programs/ConflictResolution/preslettcr.htm]. October 2004.
16. See F.E.A. Sander, "Some Concluding Thoughts," *Journal of Legal Education*, 2004, *54*, 115–118.
17. U.S. Magistrate Judge Wayne Brazil and Ohio Supreme Court Justice Tom Moyer provide two examples of the opportunity for innovative contributions from the bench. Judge Brazil, a magistrate judge in the Northern District of California, was instrumental in developing and overseeing the multi-option justice program in that court and is a nationally recognized leader in the speaking and writing about court-connected ADR. Thomas Moyer was an early proponent of ADR who promoted a statewide program of court ADR in Ohio, for which he was awarded the James Henry Award by the CPR Institute for Dispute Resolution in 2004.
18. For example, Janet Reno's efforts within the Department of Justice have had a pronounced effect on the integration of dispute resolution into the government's litigation practices.
19. See R. H. Mnookin, "Strategic Barriers to Dispute Resolution: A Comparison of Bilateral and Multilateral Negotiations," *Harvard Negotiation Law Review*, 2003, *8*(1), 1–27.
20. See R.A.B. Bush, "The Knowledge Gaps Project: Scholarly Views on the Unanswered Questions in Conflict Resolution," *Conflict Resolution Quarterly*, forthcoming.
21. But compare K. Arrow, R. H. Mnookin, L. Ross, A. Tversky, and R. Wilson (eds.), *Barriers to Conflict Resolution* (Cambridge, Mass.: PON Books, 1999).
22. See G. T. Jones, "Fighting Capitulation: A Research Agenda for the Future of Dispute Resolution," *Penn State Law Review*, 2003, *108*, 277–308.
23. See Sander, "The Future of ADR," 2000.

24. H. Raiffa, *The Art and Science of Negotiation* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1982), p. 11. For further observations, see also W. Zartman, *International Multilateral Negotiation Approaches to the Management of Complexity* (San Francisco: Jossey-Bass, 1994).
25. See, for example, D. A. Lax and J. K. Sebenius, "Thinking Coalitionally: Party Arithmetic, Process Opportunism, and Strategic Sequencing," in H. P. Young (ed.), *Negotiation Analysis* (Ann Arbor, Mich.: University of Michigan Press, 1991); and L. Susskind, S. McKearnan, and J. Thomas-Larmer (eds.), *The Consensus Building Handbook* (Thousand Oaks, Calif.: Sage, 1999).
26. See Wanis-St. John, Chapter Eight, this volume.
27. See Bush, "The Knowledge Gaps Project," forthcoming.
28. Roger Fisher and Dan Shapiro, both of Harvard Law School, are among those dispute resolution scholars who have begun to study and write about the role of emotion in negotiation and dispute resolution. See also Shapiro, Chapter Five, this volume.
29. See J. Nadler, L. Thompson, and L. Van Boven, "Learning Negotiation Skills: Four Models of Knowledge Creation and Transfer," *Management Science*, 2003, *49*, 529–540.