

Multi-Party Dispute Resolution Workshop (and Global Justice Summit) Spring 2013
Room 4750—Class Meetings; Breakout rooms, 4850
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**Multi-Party Dispute Resolution Workshop (1 Unit) and
Global Justice Summit (for 1 unit-optional add-on)**

Course Description: **Multi-Party Dispute Resolution Workshop** (1 credit) or 2 credits for those participating in **Global Justice Summit**) [course limited to 24 students]

Though it is helpful to have had negotiations or dispute resolution courses at UCI Law, this is not a prerequisite. It is also possible to participate in the Global Justice Summit (without academic credit) without taking this course.

**ATTENDANCE AT ALL SESSIONS IS MANDATORY FOR COURSE CREDIT.
THERE WILL BE EXERCISES AND ROLE PLAY SIMULATIONS DURING THE
CLASS THAT REQUIRE ALL STUDENTS TO BE PRESENT.**

This workshop will explore important theories and skills of multi-party/multi-issue dispute resolution and their application to modern ideas of deliberative democracy and political decision making.

The workshop will begin with readings in and discussion of the theories of decision making, voting rules, meeting management, and democratic deliberation and will then provide an opportunity for students to practice skills in negotiation (as parties or party representatives) and more neutral facilitation and mediation (as third parties). There will be several extensive simulations in class taken from domestic (community, environmental and governance) contexts, as well as international and some comparative areas, including agreement drafting and constitutional development.

The course itself is offered for 1 unit of credit for 5 sessions on Tuesday afternoons. Those students who want to participate in the Global Justice Summit (a day and a half exercise) in comparative constitutional drafting can receive an additional 1 unit of credit for 2 units total if they attend all sessions for the course and the special meetings and training sessions for the Global Justice Summit.

For the one unit of credit for the course alone, students will prepare two 5 page papers as assigned in the course. For two credits, students must complete the Global Justice Summit and an additional 5 page paper assessing the process and outcomes of the exercise.

Course materials will include, Lawrence Susskind and Jeffrey L. Cruickshank, *Breaking Robert's Rules: The New Way to Run Your Meeting, Build Consensus and Get Results* (Oxford Press 2006) and excerpts from Carrie Menkel-Meadow, *Complex Dispute Resolution: Multi-Party Dispute Resolution, Democracy and Decision Making* (Ashgate, 2012) and Lawrence Susskind, et. al; *The Consensus Building Handbook* (Sage Publications, 1999) and additional readings posted on TWEN.

Required/Mandatory Class Meetings (Tuesdays 4:30-7:00pm on following dates)

Tuesdays Jan. 8, Jan. 22, Jan. 29, Feb 12 and Feb. 26, 2012

Tuesday Feb. 5 (no class, but 1st paper due (5 pages)

[Thursday Feb. 7 Lecture- Kenneth Feinberg- time TBA]

March 18: Second Paper Due (5 pages)

Global Justice Summit: Friday, Feb. 8 1-5 pm; Sat. Feb. 9 9-5 pm-Educ. 1111

[Paper due Friday, March 1]- 10 pages

Required Readings and Book Purchases

Menkel-Meadow, Schneider, Love **Negotiation: Processes for Problem Solving (Aspen Wolters Kluwer, 2006)**

Susskind & Cruickshank, **Breaking Robert's Rules** (Oxford Univ. Press 2006)
Menkel-Meadow, Selected Readings Posted on TWEN

Recommended, but not required, Readings

Stuart Hampshire, *Justice is Conflict* (Princeton University Press, 2000)

Susan Carpenter & W.J. D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 2001)

Roger Fisher, William Ury and Bruce Patton, *Getting to Yes* (3rd ed. Penguin, 2011)

Lawrence Susskind, Sarah McKernan, and Jennifer Thomas-Larmer, *The Consensus Building Handbook* (Sage Publications, 1999)

Susan Podziba, *Civic Fusion: Mediating Polarized Public Disputes* (ABA Press, 2012)

John Forester, *The Deliberative Practitioner: Encouraging Participatory Planning Processes* (MIT Press 1999)

John Forester, *Dealing with Differences* (Oxford Press 2009)

.E. Franklin Dukes, *Resolving Conflict: Transforming Community and Governance* (1996)

Course Requirements

This is a mandatory attendance intensive course, requiring you to be in attendance for every hour of class. You will not receive credit for the course (1 credit) if you do not attend all sessions. The class is an intensive workshop in advanced negotiation, dispute resolution, mediation, consensus building, and facilitation and will require you to play many roles as participants, group leaders, representatives, negotiators, facilitators, mediators and dispute resolvers in a variety of different subject matter areas. The learning of all students depends on

everyone being present to perform their roles and to engage in analysis of problems and debriefings of exercises.

You will be required to write two short papers in the course, one a “mid-term” paper to be written between sessions; the final paper to be due after the class sessions are over. The mid-term paper will ask you to apply some analysis of the theoretical underpinnings of multi-party dispute resolution, deliberative democracy, consensus building, and complex negotiations to one of the issues and problems we have worked on in class. The final paper will ask you to do an in-depth analysis of a current multi-party, multi-issue dispute or problem, utilizing course concepts. More information on the papers will be provided in class. **Each of these papers should be 5 pages.** For those who are seeking writing requirement satisfaction for this course, you should do one longer paper and submit a draft for comments and revision before the end of the semester. **Please inform me after the first class if you will be taking this course for writing credit.**

For those of you who are also taking the Global Justice Summit for credit (1); you must attend the two days of class time, Thursday, Feb. 8 from 1pm-5pm and Friday, Feb. 9 9am-5pm. (There may be dinners and lunches in addition to class time with speakers so please reserve these two full days). For the additional unit of credit you will have another paper (10 pages) due on March 1, 2012 which will be a reflection paper on the experience of participating in the Global Justice Summit (separate instructions will be provided in class).

Grading for the course will be based on the following:

Class participation (role preparation and performance, quality of class discussion and analysis) = 30%
Mid-Term Paper = 30%
Final Paper = 40%

Course Description

This course is an advanced course in negotiation and dispute resolution, focusing on complex modern social and legal problems when there are multiple parties and multiple issues at stake. No prior course in negotiation is required, though it is very desirable. We will read, discuss and use a variety of role-plays and simulations to explore the issues involved in negotiation, coalition building, representation, facilitation, meeting management, mediation, communication, rules of decision, voting, consensus building, drafting agreements, charters, constitutions and documents in groups, and other issues which are presented when multiple parties seek to resolve their conflicts and disputes outside of a conventional bilateral litigation model or when groups of people seek to create new entities, or to negotiate treaties, constitutions, contracts or other agreements.

We will explore underlying theory, including democratic discourse theory, negotiation theory, game theory, social and cognitive psychology, conflict theory, and the practice of different structures and forms of multi-party dispute resolution. We will discuss some already completed case studies and we will use experiential learning, through simulations and role-plays, to explore

the applicability of the theory and effectiveness of the skills and processes described in the readings and experienced in the course.

This course will also focus on issues of group dynamics and processes of decision. You will learn how to be an effective part of a group (as a participant, advocate, representative and leader) and you will practice leading and managing group processes, an essential part of being a lawyer or effective dispute resolver or manager. Thus, you will learn from being inside group processes and complex conflict situations, as well as standing outside of them to analyze and lead them. In some exercises you will formally be assigned to an observer or mediational role; in others you will be assigned roles of direct participation or representation of constituencies. We will explore the role of lawyers in these different roles.

There are foundational concepts and constituent skills that you will learn – negotiation theories and practices, the dynamics and psychology of group processes, stages of group and coalition development, the evolution of problem framing and solving, conflict and conflict resolution theory, bargaining and game theory, strategic and principled forms of argument and behavior, organizational behavior, and models of leadership and decision making. We will look at these issues through the lens of intercultural and international variations as well. Think of this as a course in collaborative, if sometime contentious, problem solving. You will learn some important life skills, no matter what kind of legal practice you may be entering.

We will be asking you to think about some foundational questions like:

1. To what extent are there “**universal**” **principles of negotiation** behavior and to what extent do such principles or propositions vary with the number of negotiators (bi-lateral vs. multi-lateral negotiations) and the context or subject matter of the negotiation (legal, community, international, diplomatic, commercial, constitutive) as well as the relationships of the parties (one-off, repeat player, temporary ally)? In short, is a “theory” of negotiation separate from a “theory” of n+ parties in negotiation and dispute resolution? **What variables or conditions affect the conduct of negotiations and dispute resolution?**

2. To what extent are there useful propositions about “**process**” **management** in all contexts? In varied contexts? Political philosopher Stuart Hampshire has opined, in the book, *Justice is Conflict*, “[b]ecause there will always be conflicts between conceptions of the good, moral conflicts, both in the soul and in the city, there is everywhere a well-recognized need for procedures of conflict resolution, which can replace brute force and tyranny....The skillful management of conflicts, [is] among the highest of human skills.” But, does the particular form of conflict resolution or dispute management have to be tailored to the substance of the dispute or the particular parties engaged in the dispute or conflict?

3. How do we know when a particular process or outcome is **fair** or **just**? What is the appropriate amount of direct party participation for legitimacy of outcome? When does a consensus builder lose neutrality or legitimacy? What standards should be applied to the work of third party neutrals and other intervenors in human conflicts? When should deliberations be transparent and public and can secret or confidential proceedings ever be justified? What is the

role of law and rules in assessing the justice or accountability of conflict processes and outcomes? How do “rights” and “democracy” interact?

4. To what extent are our notions of conflict resolution and management **culturally based**? Are they ethnocentric or “universal”? How can competing value and belief systems operate within a conflict process? Can all values be “reduced” to “interests” or can process transcend ideology?

5. At the **skill level**, you should learn to analyze conflict situations and group dynamics, engage in negotiation, facilitation, interventions, mediation, meeting management and collaborative decision making and problem solving. These skills will, in turn, depend on some constituent skills like brainstorming, interest balancing, creativity, interviewing, questioning, persuasion, decision making and general interpersonal competence. Some of you will have natural abilities in these areas, others of you will need to learn these skills in order to develop your craft and improve your judgment. **Theory and experience** (through role plays and simulations in this course) should work together to help you develop these competencies.

6. How do **groups of people** work effectively to **create new entities** (countries, constitutions, charters, organizations) to undertake human problem solving and **governance**? Should such groups have leaders? How should they delegate functions and tasks? What methods of voting or other **forms of decision making** should they use? What are the effects and consequences of choices made about group decision making and governance?

7. How can group negotiation and decision making be **implemented, monitored and evaluated**?

We will work in several different contexts in the course simulations: community, environmental, mass/class action litigation and international to give you some experience with different kinds of multi-party disputes, drawing from both “private” and “public” law issues.

For those of you who are participating in the Global Justice Summit, you should be learning skills of group participation: negotiation, leadership, followership, drafting, and effective meeting management and participation. You should be able to take what you have learned in the Multi-Party Negotiation course and directly apply it to your experience in participation in the Global Justice Summit.

Course Schedule and Assignments

Date and Time	Topic	Readings and Assignments
Tues. Jan. 8 4:30-7:00	Course Introduction and Requirements	
	[Read <i>Getting to Yes</i> , Fisher, Ury & Patton, 3 rd ed. 2011 before class]	
	Role of conflict in Society	Menkel-Meadow et. al (Hereinafter Text -Chapter 1)
	Theories of Deliberative Democracy And Consensus Building	Text- Ch. 12 pp. 539-554 Susskind pp.18-40 Exercise: <i>Emergency Room</i>
	Review Basic Negotiation Principles	Text, Ch. 3 & 4 pp. 89-165
	Multi-Party Negotiation & Coalitions	Text, Ch. 12 pp. 527-539 Exercise: <i>House of Threads</i>
	Hand-out roles and preparation for <i>Neighborhood Care</i> for next class	
Tuesday Jan. 22	Discussion of Groups and Coalitions Behavior	
	Introduction to Mediation	Text, ch. 14 pp.617-658 Examples: Films/mediation <i>Saving the Last Dance</i> Exercise: <i>Neighborhood Care Simulation</i> Susskind pp.61-113
	debrief <i>Neighborhood Care</i> <i>Distribute Instructions for Pristine Lake</i>	
Tuesday Jan. 29	Consensus Building Processes: Rules of Decision, Process	Text, ch. 12, 555-573 Susskind pp.3-17; 41-82
	Examples/Films: Models of Mediation and Consensus Building	
	World Trade Center Site Multi-Party Nego & Med. PCI- Transportation Rulemaking	
	Exercise: <i>Pristine Lake</i>	
	Role of science and technical information; Fact-finding	
	De-brief: Comparisons of Processes: Negotiation, Mediation, Consensus Building; Administrative Reg-neg ; Law & Consensus Building	
	Instructions for Paper # 1 and Preparation for Global Justice Summit	

Feb. 5 [no class, but 1st Paper due]

Feb. 7, 2012 Lecture: Kenneth Feinberg: Mediator, BP Fund, September 11
Victims Fund, TARP and other major disputes (required)

Time to be announced

[Friday Feb. 8 and
Saturday Feb. 9

Global Justice Summit-Educ. 1111 Negotiating a New
Constitution]

Tuesday Feb. 12

Recap of conflict resolution processes and debrief GJS:
Comparisons of public/private issues
Consensual/Mandated processes
Groups and Organizations: Permanent/Ad hoc/
Constitutive
Bi-lateral/Multi-lateral
Direct, Representational

Differences in Role: Mediator or Third

Party Neutral/ Advocate/Representative

Process Design

Readings on TWEN

Group Exercise: Process Design: International

Susskind, pp.114-153

Film: *Promises or Ghosts of Rwanda*

Distribute Assignments for *COBIA (final simulation)*

Tuesday Feb.26

Intercultural and International Conflict

Readings on TWEN

COBIA prep

Menkel-Meadow, Hayner

COBIA simulation and debrief

Text., ch. 13, pp. 575-615

Uses of Dispute Resolution for Peace and

Reconciliation: Models of Restorative Justice

International Conflict Case Studies—what can we learn?

Olives and Pine Trees

Lessons Learned/Wrap-Up: Future of Complex Dispute
Resolution

Final Paper Due: March 18