LAW 610/LAW 600: MEDIATION

FALL 2018

UNIVERSITY OF OREGON
CONFLICT AND DISPUTE RESOLUTION MASTER’S PROGRAM
SCHOOL OF LAW

Class Meetings: Wednesday, 2:00 – 4:50 p.m. beginning August 29, 2018
Class Location: Law 241
Instructor: Barry Nobel, JD, PhD
Office Hours: Wednesday, 4:50 - 5:20 p.m. and by appointment
Office Location: TBA
Email: bnobel@uoregon.edu

COURSE DESCRIPTION
This class explores how mediations work, what makes mediators effective, why mediations may not reach agreement, and how to identify and manage your strengths & weaknesses in the mediation process.

As a skills-based class, the focus is on analyzing and improving your mediation skills. We will do many different exercises over the term. These exercises encourage you to use introspection, to think on your feet, to analyze what went well and what could have gone better in a real-time mediation, to learn how others handle similar challenges, to experiment with different ways of approaching thorny issues, and to give and receive constructive feedback. In real life, there are few opportunities to practice a skill like mediation in a relatively risk-free environment, with different comparison points and the chance for feedback from co-participants. Please take advantage of this opportunity for such practice. Upon successful completion of the course, students will have fulfilled the current basic training requirements for community mediators in Oregon. These requirements may be transferable to jurisdictions outside Oregon; check your state’s rules for details.

LEARNING OBJECTIVES
By taking this course, students will be able to:

- Give an overview of conflict management and mediation theory and terminology;
- Understand how to create a safe, comfortable, and respectful mediation environment;
- Skillfully prepare for mediation (including information gathering, case assessment, development, and referral);
- Apply basic mediation knowledge and skills (e.g., to identify issues, interests, and needs, facilitate effective communication, and build relationships);
• Conduct a mediation in a fair and impartial manner, with increased awareness of, and responsiveness to, mediator requirements for confidentiality, impartiality, and other ethical standards of practice;
• Develop greater abilities for mindfulness, active listening, empathy, validation, open-ended questioning, paraphrasing, and reframing;
• Help parties develop and assess options and solve problems;
• Shape and write agreements;
• Coach peers to improve mediation and coaching skills.

REQUIRED READING
4. Materials posted on Canvas: The Course Outline below indicates which posted materials should be printed out AND brought to class. Other posted materials need only be read.

The course website is located on the University of Oregon’s Canvas system at https://canvas.uoregon.edu.
Please check the course website frequently for updates.

COURSE POLICIES

**Attendance:** The School of Law believes that dependability and punctuality are essential characteristics of a good lawyer/conflict engagement specialist and that the development of good professional habits is essential. Accordingly, attendance at all classes is mandatory. Furthermore, you must be at class on time. Because the class involves group simulations and exercises sometimes requiring advanced coordination, your classmates, instructor, and assistants will rely on your reliable presence each class.

If you must be late or absent because of an extraordinary circumstance such as illness, religious obligation, or family emergency, please leave me a message in advance (bnobel@uoregon.edu), and I will offer you a makeup assignment. Excused absences must be supported by a written, reasonable and (where appropriate) properly documented justification. More than two excused absences may affect your grade negatively and may disqualify you from meeting the basic training requirements for community mediators in Oregon. Any unexcused absence will affect your grade. Penalties for failing to comply with governing attendance requirements include, but are not limited to, grade reduction, denial of course credit, and disqualification from meeting the basic training requirements for community mediators in Oregon. Students are responsible for monitoring their own attendance; no additional notice is required for the imposition of a penalty.
**Participation:** Forty percent of your grade will be based upon your attendance, preparation, and participation. Participation includes (1) completing the assigned readings; (2) preparing for the mediations using the skills you have acquired over the course of the term; (3) bringing your preparation materials to class; (4) completing all simulations, role plays, and companion exercises in a timely manner at a reasonable level of quality; and (5) contributing to the Small Group Conversations exercises (see Appendix A). Remember that your participation grade includes turning in any required companion exercises and assignments (such as answering questions, filling out prep sheets, etc.). These deliverables will not be graded (except as indicated below) but completing them on time and at a reasonable level of quality will be considered as part of your participation grade. Participating actively also means providing your counterparts with useful, relevant feedback and contributing to class discussions in a thoughtful way. Reporting what happened in a mediation or other exercise is most helpful by describing specifics, articulating the underlying dynamics of the exchange, and coming up with possible ways to deal with these problems in the future.

Students who arrive to class late and/or unprepared are doing a disservice to their mediation counterparts. A lack of preparation will negatively impact your participation grade. Conversely, careful preparation and high-quality participation is rewarded. See Appendix A.

**Late Assignments:** You are expected to turn in your assignments on time. If you are unable to turn in an assignment on time, please contact your instructor in advance to discuss whether an extension is possible (it may not be). Unexcused late assignments affect your grade.

**Computer Use:** Computer use (including smart phone use) in this class detracts from the learning experience for you and your fellow students. Accordingly, use of computers and other electronica is not permitted during class – except during official breaks – unless you are otherwise instructed. If you are found to be using your computer during class, your grade will be affected. This policy is for your benefit and for the benefit of your fellow learners.

**Video Recording:** This class involves video recording and reviewing opening statements and a mediation. Video serves to provide feedback for improving your mediation skills. It also serves as data to help sharpen your analytical and coaching skills.
**Accessible Education for All Students:** The University of Oregon works to ensure inclusive learning environments for all students. We recognize that students bring a variety of learning styles to the course, and that some learning styles may require adjustment to course structure. I am happy to talk with you about such adjustments. Please be in touch with me if there are aspects of the instruction or design of this course that result in barriers to your participation as a result of learning style or diagnosed disability. As this course involves anonymous grading, please contact Assistant Dean of Student Affairs, Nicole Commissiong, for information on accommodations. For more information, you are also encouraged to contact the Accessible Education Center (formerly Disability Services) in 164 Oregon Hall at 346-1155 or uoaec@uoregon.edu.

**Inclusion and Collegiality:** Our community values inclusion. We are committed to equal opportunities for all students, faculty, and staff to develop individually, professionally, and academically regardless of ethnicity, heritage, gender, sexual orientation, ability, socio-economic standing, cultural beliefs, and traditions. We are dedicated to an environment that is inclusive and fosters awareness, understanding, and respect for diversity. If you feel excluded or threatened, please contact Associate Dean of Students Jennifer Espinola at espinola@uoregon.edu or 541-346-1557.

**Academic Integrity:** Students are expected to demonstrate high levels of academic integrity and professionalism and are prohibited from committing or attempting to commit any act that constitutes academic misconduct. Plagiarism and other forms of academic dishonesty will be grounds for automatic failure in the course. If you have questions about conduct, please ask your instructor or review the University Student Conduct Code or the UO Policy.

**Privacy & Confidentiality:** Over the semester, we want to cultivate an atmosphere of trust and openness among all participants. Accordingly, please be thoughtful when deciding whether to discuss anything that happens in class outside of class. Throughout the course, you may receive confidential instructions for various exercises. You should, of course, keep these away from those with other instructions until after the mediation is over (at which time you can both share your confidential instructions, if you like). In addition, please do not share the contents of these confidential instructions with people outside of class. If the content of a case becomes widely known, then the case becomes less valuable.

**Pronouns:** Note that most of the materials we will read, as well as much of our discussion in class, will use the pronouns “he/him/his” or “she/her/hers.” Gender is not binary, and some people prefer to use “they/them/their” or “ze/hir” for individuals. I try to limit the use of pronouns, but when pronouns are necessary, having a singular pronoun match a singular noun can be important for clarity. For more information on gender identity, please visit the LGBTQA3 office, http://dos.uoregon.edu/lgbt.
**Building Safety:** Emergencies are rare, but if they happen, we must know how to respond effectively and efficiently. The University's Emergency Management and Continuity group provides extensive resources for emergencies (see [http://emc.uoregon.edu/](http://emc.uoregon.edu/)). Please review these materials when you can, with special emphasis on the following:

- Identify all the exits in each of your classrooms;
- Practice being aware of your surroundings at all times; and
- Familiarize yourself with the basic procedures around **earthquakes** ("duck, cover, hold" at [https://www.youtube.com/watch?v=O-MycATjypg](https://www.youtube.com/watch?v=O-MycATjypg)) and **active shooter situations** ("run, hide, fight" at [http://emc.uoregon.edu/content/active-shooter-situations](http://emc.uoregon.edu/content/active-shooter-situations)).

We are all responsible for the safety and well-being of our community. For more on emergency procedures and building safety, please talk with the instructor about the situation in your classroom, with Dean of Students Jennifer Espinola, or with Erica Daley, Associate Dean for Finance and Operations.

**Prohibited Discrimination and Harassment Reporting**

Any student who has experienced sexual assault, relationship violence, sex or gender-based bullying, stalking, and/or sexual harassment may seek resources and help at safe.uoregon.edu. To get help by phone, a student can also call either the UO’s 24-hour hotline at 541-346-7244 [SAFE], or the non-confidential Title IX Coordinator at 541-346-8136. From the SAFE website, students may also connect to Callisto, a confidential, third-party reporting site that is not a part of the university.

The instructor of this class, as a Student Directed Employee, will direct students who disclose sexual harassment or sexual violence to resources that can help and will only report the information shared to the university administration when the student requests that the information be reported (unless someone is in imminent risk of serious harm or a minor). The instructor of this class is required to report all other forms of prohibited discrimination or harassment to the university administration.

Students experiencing any other form of prohibited discrimination or harassment can find information at [respect.uoregon.edu](http://respect.uoregon.edu) or [aaeo.uoregon.edu](http://aaeo.uoregon.edu) or contact the non-confidential AAEO office at 541-346-3123 or the Dean of Students Office at 541-346-3216 for help. As UO policy has different reporting requirements based on the nature of the reported harassment or discrimination, additional information about reporting requirements for discrimination or harassment unrelated to sexual assault, relationship violence, sex or gender based bullying, stalking, and/or sexual harassment is available at [Discrimination & Harassment](http://titleix.uoregon.edu).

Specific details about confidentiality of information and reporting obligations of employees can be found at [titleix.uoregon.edu](http://titleix.uoregon.edu).
Mandatory Reporting of Child Abuse
UO employees, including faculty, staff, and GEs, are mandatory reporters of child abuse. This statement is to advise you that your disclosure of information about child abuse to a UO employee may trigger the UO employee’s duty to report that information to the designated authorities. Please refer to the following links for detailed information about mandatory reporting: Mandatory Reporting of Child Abuse and Neglect.

What You Can Expect from Your Instructor:
You can expect the instructor to:
☐ plan and facilitate learning opportunities that will help you meet the course goals and objectives
☐ provide constructive feedback on your performance
☐ be open to constructive feedback on my performance
☐ bring my teaching expertise and experience into the classroom
☐ be open-minded in responding to your ideas and suggestions
☐ allow you to wrestle with ideas to shape your own conclusions

COURSE REQUIREMENTS AND GRADING

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<thead>
<tr>
<th>Assignment</th>
<th>Due Date</th>
<th>% of Grade</th>
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<tbody>
<tr>
<td>1. Attendance &amp; Class Participation (includes Small Group</td>
<td>8/29/18-11/28/18</td>
<td>40%</td>
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<tr>
<td>Conversations Case &amp; Mindfulness Reports; See Appendix A)</td>
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<td>2. FEND Exercise</td>
<td>9/5/18</td>
<td>5%</td>
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<td>3. Written Agreement (See Appendix B)</td>
<td>10/3/18</td>
<td>10%</td>
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<td>4. Final Paper (based on role play video recording &amp; your</td>
<td>11/28/18</td>
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<td>responses to other questions; 4-6 sides. See Appendix B)</td>
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<td>5. Multiple Choice &amp; Short Answer Exam (based on readings &amp;</td>
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<td>lectures)</td>
<td>CRES: 12/7</td>
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<td>(2-5 pm)</td>
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<td>JD/CRES: 12/10</td>
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<td>(8:30 – 11:30 am)</td>
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<td>Total</td>
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<td>100%</td>
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COURSE SCHEDULE
Note: If the reading is not followed by specific page numbers, please read the *entire* selection.

**IMPORTANT:**
On the dates indicated below, please print out and bring to class *Pursuing Peace: MBCE* Part I, and the Mediation Skills Manual. The exercises in *Pursuing Peace: MBCE* Parts II & III should be completed and brought to class on the dates indicated as well.

**Dates below are DUE DATES for the listed assignments:**

1. August 29: Introductions; Reflections & Skill-building; Course Goals & Methods; Conflict; Mindfulness-based Conflict Engagement (MBCE)

   McCorkle & Reese: Chapters 1 & 2
   Wherever You Go, There You Are: xiii – 20

   Materials on Canvas:
   *Pursuing Peace: MBCE Part I: 1 – 6*

   Articles: Giles – *Are You a Self-Aware Person?*
   Bowling – *Bringing Peace into the Room*
   Salzberg – *Getting Started with Meditation* (optional)

2. September 5: Negotiation; Third-Party Interventions; Mediation; MBCE (cont.)

   McCorkle & Reese: Chapters 3 & 4
   *Stories Mediators Tell: Chapters 1, 25*
   Wherever You Go, There You Are: 21 – 43

   Materials on Canvas
   *Pursuing Peace: MBCE Part I: 16 – 21*
   *Pursuing Peace: MBCE Part II:*
   Complete pages 2 – 4: FEND Exercises
   *(To be handed in and graded!)*
   *Pursuing Peace: MBCE Part III – Confidential Exercises*
   Complete pages 2 – 7 and bring to class
   *Mediation Skills Manual (MSM): 1 – 16*

   Article: Bricker – *The Legal Community Embraces Mindfulness*

   **FEND EXERCISE DUE**
3. September 12: Creating a Safe & Comfortable Environment; Mediator’s Opening Statement; Storytelling; Issue Identification; The Importance of Role-Playing

McCorkle & Reese: Chapters 6 & 7
*Wherever You Go, There You Are*: 44 – 74

Materials on Canvas:
- *Pursuing Peace: MBCE Part I*: 7 – 15
- *MSM*: 17 – 20
- Chapter: Covey – *Sharpen the Saw*

4. September 19: Mediator’s Opening Statement Video-Recorded; Setting the Agenda; Problem Solving; Mediation Demonstration

McCorkle & Reese: Chapters 8 & 9
*Wherever You Go, There You Are*: 75 – 99

Materials on Canvas:
- *MSM*: 21 – 24
- Articles: Jauhar – *Empathy Gadgets*
  Riskin – *Mindfulness Foundational Training*

5. September 26: Settlement & Closure; Documenting Agreements
Role Plays (1/2 class mediates)

McCorkle & Reese: Chapters 10 & 11
*Wherever You Go, There You Are*: 101 – 126

Materials on Canvas:
- *MSM*: 25 – 40
- Article: Wright – *The Meditation Cure*
6. October 3: Ethics & Confidentiality; Role Plays (1/2 class mediates)

McCorkle & Reese: Chapter 5
Wherever You Go, There You Are: 127 – 150

Materials on Canvas:
MSM: 41 – 44

Article: OMA Core Standards
Lieberman – Why You Should Stop Being So Hard on Yourself

WRITTEN AGREEMENT DUE

7. October 10: Challenging Issues & Small Group Conversations (SGC)

Stories Mediators Tell: Chapters 5, 19, 20, 26
Wherever You Go, There You Are: 151 – 175

Materials on Canvas:
Articles: Nobel – Meditation and Mediation (optional)

8. October 17: Role plays with Coaches (1/2 class mediates) & SGC

Stories Mediators Tell: Chapters 4, 6, 8, 11, 14
Wherever You Go, There You Are: 176 – 200

9. October 24: Role plays with Coaches (1/2 class mediates) & SGC

Stories Mediators Tell: Chapters 21, 23, 24, 28
Wherever You Go, There You Are: 201 – 219

10. October 31: Role Plays with Coaches (1/2 class mediates) & SGC

Stories Mediators Tell: Chapters 2, 7, 9, 12, 29
Wherever You Go, There You Are: 220 – 235
11. November 7:  Role Plays with Coaches (1/2 class mediates) & SGC

*Stories Mediators Tell: Chapters 3, 10, 13, 18, 31*
*Wherever You Go, There You Are: 236 – 256*

12. November 14:  Video-Recorded Role Plays (all mediate)

13. November 21:  Cultural Humility & SGC

*Stories Mediators Tell: Chapters 15 – 17, 22, 27, 30*
*Where You Go, There You Are: 257 – 270*

Materials on Canvas

*Pursuing Peace: MBCE Part III:*
  Complete pages 6 – 7 re: a culturally challenging experience &
  bring to class

Articles: *What is Cultural Competence?*
*IMI Intercultural Criteria* (skim)

14. November 28:  Wrap-up

*FINAL PAPER DUE*
APPENDIX A: ATTENDANCE & PARTICIPATION

Attendance (21 points in total; 1.5 point for each full class attendance)
Attendance is mandatory and will be taken at every class. Arriving late or leaving early will negatively influence your grade. If you must be late or absent because of an extraordinary circumstance such as illness, religious obligation, or family emergency, please leave me a message in advance (bnobel@uoregon.edu), and I will put together a makeup assignment for you. (See Attendance, p. 2, above, for important details.)

Participation (19 points in total)
I expect all students to respect other students in all our class interactions. My goal is that we have a comfortable space to cultivate exploration and learning. Listening well is vitally important and necessary to our success. But neither sitting back to JUST listen nor dominating the airwaves is the best outcome. Everyone must be fully involved for this course to be of greatest benefit to all. (See Participation, p. 3, above, for important details.)

Small Group Conversations (SGC) constitutes an important aspect of participation for both facilitators and groups members

Purposes of SGC: To stimulate small group discussion on topics of interest;
To encourage those who are less comfortable speaking up to do so;
To provide facilitation experience;
To help prepare for the final exam.

Process:

A. Each student signs up to facilitate a small group conversation during two of the following dates: 10/10; 10/17; 10/24; 10/31; 11/7; 11/21. One date is to facilitate a conversation about Stories Mediators Tell; the other date is to facilitate a conversation about Wherever You Go, There You Are.

B. At the beginning of the class, the Stories Mediators Tell Facilitator and the Wherever You Go, There You Are Facilitator assigned for that day turn in a copy of their reports – unless each has already facilitated and turned in a report earlier in the semester. (Keep one copy to use when facilitating your group.) These reports are described below.
The *Stories Mediators Tell* Facilitator turns in a Small Group Conversations Case Report (CR) in the following form, covering ONE of the assigned chapters. (*Notify the other group members in advance which chapter you will focus on.*) Please number the sections.

1. Summarize the facts of the underlying dispute. (2 – 3 sentences)

2. Describe the mediation context (1 paragraph)
   a. Single mediator or co-mediators
   b. Number & length of session(s)
   c. Solo and/or joint session(s)
   d. Relevant environmental factors (location, food, etc.)

3. Were attorneys present? If so, briefly describe the helpful and/or unhelpful roles played by the attorneys. (1 – 3 sentences)

4. Noteworthy mediator moves (e.g., processes, skills, techniques, questions, etc.).
   (1 paragraph)

5. Re: #4: Which mediator moves did you find most intriguing, helpful, and/or surprising? Why? (1 paragraph)

6. Re: #4: Which mediator move might present the most difficulty for you personally as a mediator? Why? (1 paragraph)

7. Briefly summarize the author’s “second thoughts.” (1 paragraph)

8. List 3 questions that you think will facilitate the most beneficial group discussion.

The Facilitator for *Wherever You Go, There You Are* turns in a Small Group Conversations Mindfulness Report (MR) covering one of the assigned chapters. (*Notify the other group members in advance which chapter you will focus on.*) The MR has four paragraphs. The first paragraph summarizes the contents of one of the chapters. The second paragraph expresses your opinion about that chapter. The third paragraph describes your response to trying one of the mindfulness experiments described in one of the chapters assigned. (It need not be the one you dealt with in paragraphs one and two.) The fourth paragraph lists 2 or 3 questions about the material that you may use to stimulate discussion in your small group. Please number the paragraphs.
Participation Grading:

<table>
<thead>
<tr>
<th>Category</th>
<th>Below Standards</th>
<th>Satisfactory</th>
<th>Good</th>
<th>Excellent</th>
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<tr>
<td>Participation</td>
<td>Assignments incomplete; comments sporadic; frequently demonstrates a lack of interest</td>
<td>Assignments completed and comments constructive at times; sometimes goes on auto-pilot or derails</td>
<td>Assignments completed and comments constructive throughout the term. Stays on task</td>
<td>Assignments completed with keen attention; plays dynamic role in discussions &amp; exercises throughout the term</td>
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< 14 pts.       | 14-15 pts.      | 16-17 pts.   | 18-19 pts. |

Excused Absences

A student with an excused absence will have the opportunity to make-up attendance but not participation points. In most cases, make-up points are earned by writing an essay and possibly giving a brief presentation on the essay in class. (See Attendance, p. 2, above, for important details.)
APPENDIX B: WRITTEN ASSIGNMENTS

Papers (FEND Assignment; Written Agreement (1 – 2 sides in length); Small Group Conversations Case Report (CR); Mindfulness Report (MR); Final Paper (4 – 6 sides in length) must be submitted on time to receive full credit.

The FEND Assignment, Written Agreement, CR, MR, and Final Paper must be double-spaced, 12-point font, black ink, and one-inch margins all the way around. Printing on both sides of the paper is acceptable. Please use a header like the one immediately below. Let me know if you have any questions about this. Grading of the Written Agreement and Final Paper will be anonymous.

Date: [the date you are submitting the paper]
To: Barry Nobel
From: [On the Written Agreement & Final Paper use your number - not your name – assigned by Registrar's Office.]
Re: [title of document]

I will use the standards below in grading your written assignments:

\[ A = \textit{Excellent (90-100\%)} \]
Written work is presented at a mature level, well organized paragraphs and carefully edited, with correct grammar, good vocabulary, and high quality, careful and informed thinking. It shows thorough and active grasp of concepts and demonstrates exceptional synthesis of course materials.

\[ B = \textit{Good (80-89\%)} \]
Written work is presented at the graduate level, with good grammar, vocabulary, and thought, with good command of content and organization and only a few minor flaws. It shows good grasp of concepts and synthesis of course materials but does not rise to the level of being exceptional.

\[ C = \textit{Satisfactory (70-79\%)} \]
Written work is presented at the graduate level with adequate grammar, vocabulary, and thought, but with frequent flaws, problems with organization, weak or minimal grasp of concepts or synthesis of course materials.

\[ D = \textit{Minimal Credit (60-69\%)} \]
Written work is marred by serious problems of grammar, vocabulary, disorganization or unclear expression. Fails to meet basic minimum course expectations in a timely way. Grasp of concepts is incomplete or uncertain, and student does not adequately synthesize course materials.
\( F = \text{Far Below Standard Expectations (<60\%)} \)

Written work does not achieve graduate level grammar, vocabulary, organization, and thought. Does not master concepts or synthesize course materials.