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## Book Review

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## BOOK REVIEW

**THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT.** By *Christopher W. Moore*. San Francisco: Jossey-Bass Publishers, 1986. Pp. xxii, 348. \$24.95

Joseph B. Stulberg\*

For two decades, there has been a dramatic growth in the use of mediation to resolve disputes in such disparate areas as civil rights, environmental design, consumer-merchant practices, matrimonial actions, parent-child relations, native american land claims, intergovernmental budget allocations, prisoner grievances, student disciplinary charges, and relations among neighbors. Until recently, the only resources available to guide the conduct of mediators in these non-traditional arenas were books written by, and addressed to, mediators of labor-management collective bargaining issues. Fortunately, that is changing. Among the recent works written for persons who mediate disputes in these new arenas, this book is a most comprehensive, insightful offering.

Moore's explicit purpose is to demystify what mediators do in assisting parties to reach a settlement. By painstakingly setting forth the sequence of mediator "moves," he rightfully avoids the teaching of mediator techniques by "war stories" and rejects attempts by mediators to keep their "art" a "secret." A mediator of any type of dispute would profit from studying this book.

Although Moore identifies three major goals for his work—illustrating the impact of mediation on the negotiation process, beginning to develop a theoretical explanation for the practice of mediation, and providing practitioners with concrete techniques for mediating—he concentrates his considerable skills almost exclusively on addressing the third goal: providing a systematic analysis and explanation of mediator "moves." Moore divides the mediator's tasks into two broad categories: noncontingent and contingent. The former category captures all those moves that a mediator initiates in all disputes; the latter group includes those mediator responses to special or idiosyncratic problems that occur in some but not all negotiations. The strategy of the book is to identify the twelve noncontingent moves and to identify five of the more common contingent strategies. The author then conducts a detailed examination of each of these moves.

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\* Associate Professor of Management, Baruch College of the City University of New York; B.A., Kalamazoo College; J.D., New York University School of Law; M.A., Ph.D., University of Rochester. Member of New York State Bar.

A listing of the noncontingent “moves” (a term that is sometimes confusedly used synonymously with “stages of mediation”) gives one a sense of the breadth of the author’s analysis: gain entry to the dispute; assist parties to select the appropriate conflict resolution approach and arena; collect data and analyze the conflict; design a mediation plan; practice conciliation; assist parties to begin productive negotiations; identify important issues and build an agenda; identify interests; aid parties in developing settlement options; assist in assessing settlement options; promote final bargaining; and aid in developing an implementation and monitoring plan.

Although the analysis of some moves are more subtle and thorough than others, Moore’s painstaking examination of the various dimensions of the mediation process is incisive. For instance, every mediator confronts the simple housekeeping question of whether to hold the discussions at a neutral site rather than at the offices of one of the parties. Moore explicitly identifies seven “benefits” and three “costs” for selecting the neutral forum. He lists ten specific moves for building trust among negotiating parties. He offers seventeen topics that a mediator can use to invite the negotiators to address while establishing the procedural ground rules that shall govern the negotiations. Moore notes eight factors that influence the effective implementation of any mediated agreement. These lists, and other helpful checklists appearing throughout the work, are not gimmicks designed to spoonfeed the reading audience; rather, they are useful summaries—frequently given some empirical credence by social science research—for helping the mediator respond effectively to structural or behavioral challenges to the successful use of the mediation process.

Moore’s ambition is to write both an analysis of the mediator’s role and a practical guide for the mediator who serves in a variety of dispute settings; therein lies the seed of the book’s principal weaknesses. Moore couples the abundance of lists and guidelines with descriptive accounts of what other writers or researchers have said on a given topic. This leaves the reader confused as to whether the lists are mere summaries of various insights or Moore’s prescriptions for how the mediator should behave. For example, Moore describes four different ways in which mediators enter disputes, one of which is direct initiation by the mediator. While Moore is certainly correct in noting this approach as one way in which mediators, for certain types of disputes, have gained entry, he does not examine whether it is desirable to proceed in that fashion. Is such entry a form of “ambulance chasing” that merits our collective condemnation?

The lack of a commanding perspective hints at a related weakness: the absence of a paradigm dispute for which the twelve-step analysis of necessary mediator “moves” perfectly fits. The most obvious candidate is a multi-party community controversy or public policy dispute. For pedagogical purposes, such a paradigm would help the reader map out the multi-step analysis

to various components of a dispute setting and understand more thoroughly the complexity of the dispute environment that demands the rich, detailed analysis that Moore offers. Without it, the reader is left on his own to appreciate how all of the seemingly tedious elements that Moore examines are relevant to discharging the mediator's tasks. The danger is that those persons whose experience does not match the richness of Moore's—which is to say most people—will dismiss as irrelevant many of the points that Moore invites us to attend to because their intervention begins from a different vantage point or their dispute environment is less complex.

Finally, the drawback of checklists is that it masks the priority or importance that we should attach to each entry. When discussing the different options for establishing the agenda of discussion, Moore cites eight different approaches, ranging from an ad hoc ranking to packaging proposals. But he never tells us whether one is usually better than another or whether the mediator, if he has a choice, should systematically avoid using some approaches. While such a list fits nicely into the "descriptive" approach, it makes the "prescription" misleadingly ambiguous.

Moore's analysis raises numerous questions about the practice of mediation. It thereby invites a more thorough examination of our assumptions regarding such concepts as power, impartiality, and consensus decision-making. It requires us to probe more searchingly for the normative principles that support the decision to use mediation as a dispute settlement process. The book's value lies in Moore's challenging us to enrich our analytical understanding of the negotiation and mediation processes with the insights of a reflective practitioner.

