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The Legal Foundation–Defining the Legislative Format

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The Legal Foundation–Defining the Legislative Format

Abstract
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Abstract
Current and pending mediation legislative programs in the United States, Canada, and other countries were examined by speakers and panelists who are living under these new systems or were authors of their design. Topics included court annexed programs, mandatory programs, voluntary programs, private institutional programs, the Uniform Mediation Act, state and federal initiatives, and the impact each has, or will have, on the mediation practice.

Bill Huss: My name is Bill Huss and I am from Los Angeles. I was a trial lawyer for nearly a quarter of a century and then a Superior Court judge. I have been a mediator since that time. To my right is Sharon Press, and to my left is Mike McWilliams. They're going to tell you very quickly what they are going to talk about and then I'll tell you what I'm going to talk about. We'll start with Sharon.

Sharon Press: I plan specifically to talk about confidentiality as it relates to mediation and what sort of trends are in that direction.

Mike McWilliams: I'm going to talk about things not being what they seem to be, in particular, the Uniform Mediation Act. Things that are not what they appear to be are epitomized by a story of Shawn McGregor in

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the bar drinking martini after martini. At the end of each martini, he’d fish out the olives and put them into the jar. Finally, when he stumbled up to go, the guy sitting next to him said, “What was that all about, putting the olives in the jar?” He said, “That’s what my wife sent me out for was a jar of olives.”

**Bill Huss:** We have agreed to continue the format of interactivity. Please feel free to ask questions.

I’m going to walk through the materials that are in your packet. The court-annexed mediation program is just a survey. I tried to select some models and some examples of what the courts have done around the country and in the federal courts, to show you the diversity that has happened spontaneously and progressively around the country. I remember when I had been a lawyer for about a year, maybe a year and a half, I was given a mandatory settlement conference hearing to attend. I was attending with a salty adjustor who had been around for a long time. His name was Nate Moore. Nate is no longer with us, but he was the practical spearhead of the mandatory settlement conference program that was initiated as a pilot program in Los Angeles back in the 1960s.

I was driving out and going to my first settlement conference. Nate had been one of the founders of settlement conferences, so I said, “Well, Nate, what can you tell me that I should do?” I said, “You’re going to be running things.” He said, “Well, Bill, remember two things: one, never close the door, always keep it open so everybody’s talking. Number two, give the other side something to think about when you make an offer or a demand.” Now I’ve never forgotten that and have settled an awful lot of cases keeping those two principles in mind.

That same kind of format was adopted by the family law program in Los Angeles in about 1981 to include mandatory mediation. A settlement conference is a lot different from a mediation in that the court is almost obliged to interject itself into the discussions. Some of the judges are not only opinionated, but are truly dictatorial in describing your case and their evaluation of it.

**Mike McWilliams:** Often wrong, too.

**Bill Huss:** That’s right. I wanted to teach my children to read early when they were very young. I bought a book on how to teach children to read early that talked about at least a dozen methods of teaching children to read early. The one thing that he found in common with all
of them, regardless of how quirky some of them were, is that children learned to read early. The reason for that is that people were paying attention to them and focusing on them. The same thing applies to mediation, settlement conferences, and other mechanisms to get people together. I don’t care what the format is that the state enacts or enforces. People are going to be motivated to look at their files and get the job done just by the pure fact that they are required to show up somewhere and talk about the case. Therefore, I don’t think any one format is better than any other. I think that some day there may be, but we don’t have it yet.

The federal system has had numerous programs of mandatory mediation and arbitration around the various districts. In 1998, Congress enacted the Alternative Dispute Resolution Act, which authorized federal district courts to implement these programs in all civil actions. Part of that was motivated by a 1989 case, where the Seventh Circuit found that, just because the counsel showed up and the party didn’t show up, sanctions could apply. The court could enforce its rule, which started the ball rolling, so to speak.

Bankruptcy seems to be a very fruitful area of mediation in the federal system, because bankruptcy cries out for negotiation. You have creditors and creditors’ committees with competing claims where negotiation is just absolutely necessary. Wherever you find negotiation, you’re going to find mediation, because in my view, mediation is probably the highest form of negotiation. It’s a third-party assisted negotiation. I think it was Larry who said earlier that the courts are ordering these programs so that they don’t have to worry about who’s going to blink first. I think the same thing happens in mediation. The mediator takes the onus off of either side or both sides to decide who is going to blink first.

The interesting thing to me is that in some of these programs, the issues involving grandparents are mandated. I don’t know about your jurisdiction, but there are lots of jurisdictions where grandparents have no rights at all with regard to grandchildren. In Maine, however, the visitation rights of grandparents are mandated to be mediated. Nevada courts were absolutely beleaguered with cases and clogged calendars, so they initiated a mediation program to alleviate that.

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There are lots of policy reasons for establishing the types of programs that you’ll see, which are worth just discussing, at least among ourselves. For example, in almost every jurisdiction where mediation is mandated in civil cases, and especially family cases, domestic violence cases are exempted. It does not take a rocket scientist to find out that one of the reasons why they are not mediated is that one of the parties in that mediation may be intimidated emotionally or psychologically by the other, so mediation would probably be fruitless or unfair.

The motivation or policy for giving grandparents visitation rights seems to me to be something that is a healing kind of policy. More than one or two states should have that kind of program. Alabama has a program that has real teeth. As my wife said one time when we were passing by a growling dog, “Teeth, teeth.” Well, that’s what they have in Alabama. The program is mediation-mandated for all parties when the court orders mediation sessions, when all the parties agree to mediate, and upon motion by either party. Alabama is very anxious to make sure that the parties with authority are there to negotiate the settlement.

Delaware has a very interesting program. Their statute forces parties into mediation if, before the litigation is filed, the claims are $100,000 or more. Anything less than that is apparently not mandated. The statute requires the parties to come to mediation sessions prepared and allows witness testimony and cross-examination in mediation proceedings. The policy behind that is beyond me, but the only thing I can think of is that Delaware used to be a favorite jurisdiction for corporations. Corporations did a lot of litigation in Delaware with corporate finances and stockholders’ lawsuits and things like that. Perhaps that is the policy behind it. All I can say is that I don’t expect that to become universal.

Louisiana has a broad policy for mandated mediation. The program is one that requires all of the parties with authority to negotiate and enter binding agreements, and they must attend the court-annexed mediation. It’s very open-ended. This gives the parties and their counsel a great deal of latitude in how to choose a mediator and how to enter into their process, but they have to do it.

Maine is very interesting. Maine raises an issue of good faith. We’re going to hear more about that later. The statute is very tough. The people who do not enter into the court-ordered mediation or don’t enter into it in good faith can suffer dismissal or default. That’s one of the toughest
that I know of, so I think that the parties should beware if you’re in Maine.

Montana has an appellate program. All civil appeals—including workers’ compensation, money judgments, and things of that kind—must go into the mandated mediation program. This is kind of an interesting thing to me because statistics show—and I’ve checked this out in Los Angeles and it’s true there, and I am told that it applies almost everywhere—that 95% of all cases settle before trial. Of the 5% that go to trial, half of those settle during trial. So, in Montana, they’re dealing with 2½% of the cases that actually go to trial. It sounds to me like they ought to make it mandatory at the trial level. I think one of the purposes that we serve that is extremely important is of that 95%, and I’m using this strictly just based on anecdotal information, a chunk of that 95% is attributable to what we do, and we do it faster.

Everybody knows about the settlement on the courthouse steps. That’s one of the functions that we perform to prevent that from happening. When you settle on the courthouse steps, you really cannot negotiate with a clear mind. It’s like what I call DQA, declining quantity anxiety. That’s the feeling you have when you look at your gas gauge and it’s on empty and you don’t know how long it’s been there. The same thing is true in settling on the courthouse steps. Your time is running out, and you develop an anxiety. I’m quite sure that all of us who have had any trial experience know that we have either settled for a lot more than we thought we would get or vice versa, because we settled on the courthouse steps.

I think that there are cases that have to be tried. I know from when I sat in the court in Los Angeles that did nothing but injunctions, there are lots of cases that have to be tried like quiet title, spite suits, and spite fences. Things like that where there are a lot of emotional issues. There are also statutory construction or contract construction cases where the words have a meaning. Those things are cases that have to be tried. You are not going to be able to negotiate those cases very well.

I had the case when Peggy Lee sued Disney. She signed a contract with them in 1958 to do the voiceovers and the songs in the animated film, *Lady and the Tramp*. The contract said, “Notwithstanding any other provision in this contract, Ms. Lee is to get ten percent of gross sales of all transcriptions sold to the public.” This case came before me in 1990.
At that time, Disney had sold $90 million worth of videocassettes of *Lady and the Tramp* alone. That was just astounding to me. It still is. She wanted $9 million. Well, Disney made a motion for a partial summary judgment on the issue of what were "the transcriptions sold to the public." Were they videocassettes, which hadn't even been invented in 1958? Well, they came before me, and I read their briefs. I knew what they were going to say, but I wanted them to have an oral argument period encapsulated for the appellate court. I knew that, no matter what happened, somebody was going to appeal that case. So I said to Peggy Lee's lawyers, "I know what your motion is. What's your response to Disney?" Disney's lawyer reached under the table and pulled out this big brown paper envelope and pulled out a large, giant-size record. He said, "You remember, your honor, the Lone Ranger, Terry and the Pirates, all of those cases—all those shows were transcribed. Well, that's what this is. It's a transcription." I asked Peggy Lee's lawyer, "Well, what do you say about that?" And he said, "That was sold to radio stations, not to the public." I asked Disney's lawyer, "Well, what about that?" He said, "Well, the contract says that all scientific advances shall inure to the benefit of Disney." So I turned to Peggy Lee's lawyer and I said, "Well, what do you say about that?" He said, "It says, 'Notwithstanding any other provision in this contract.'" So I found for Peggy Lee. Eventually her case went to trial on the issue of damages, and she got $9 million plus interest.

The point is, there is no way to mediate that case. You may be able to mediate damages, but is somebody going to concede that something like that is a transcription sold to the public? The newspapers, like the *Hollywood Reporter* and *Daily Variety*, came out screaming that the courts were tearing up the industry, destroying the entertainment business, and all that kind of thing. There's a lot of pressure on big cases like that. There won't be any meaningful mediation quite often.

In part of the remarks that we heard earlier, the issue of grievance came up. The idea of grievances is not new. The Tennessee model that I have included in the materials sets up a grievance procedure for non-lawyer mediators, and of course, lawyer mediators. If there are any grievances, they must be handled by the Bar Association. So the issue has been raised, and I'm not quite sure what is going to happen nationally. Bob Creole and Larry Watson touched on some of the issues that we will see
coming out of these various programs and their experiences. Confidentiality and certification are threshold questions that we are working with. Now, tell us about confidentiality.

Sharon Press: Okay. I am going to take a slightly different approach to the topic. Rather than talk about specific states, what I will do is talk about the concepts and how it is playing out. I think that we probably will agree that, if we were asked what the foundations are on which mediation rests, you'd probably come up with self-determination, impartiality of the mediator, and confidentiality. Someone might have another one to throw in there, but for most of us, those are the three that would come to mind. Why is that? There's been a lot written on this. Certainly the activities that went on as part of the Uniform Mediation Act developed the field greatly in terms of research and writing about why we care about confidentiality in mediation. Candor of the parties always comes up. Fairness to the participants. After all, if you think about it, in mediation, you're not dealing with sworn testimony. You are not dealing with people necessarily having even to tell the truth in mediation. They can say whatever they want. They can tell you something out of the earshot of someone else, violating the whole principle of due process in which you should have a right to hear what someone says and confront it. So, clearly, there would be some problems if we then allowed these things said in this other kind of process to come in and be used in a way that we are more used to in terms of due process. The notion of privacy—some people want to choose a mediation for the very reason that they don't want to go to court. They don't want to air everything that's happened in public.

Finally, neutrality of the mediator, which could be compromised if the mediator was needing to testify or explain to others about what happened in the mediation. Larry Watson touched on it earlier, the concept that is most often used and, in fact, is the primary part of the Uniform Mediation Act.² It is really a uniform privilege act about confidentiality in mediation. Some of us were critical of the Act because it really is not a uniform mediation act. Privilege is really the way that most places have dealt with it. In other words, if you say something in mediation, you then have a privilege to prevent someone else from disclosing that in a further

proceeding, be it a judicial proceeding or an arbitration or some other adjudicatory process. However, what about the rest of the world? Actually, Jack Cooley used to talk about it as disclosure to the rest of the world. What about the expectation that people have when they go to mediation that you are not, either as the mediator or the other party, going to leave that mediation, get on the internet, and start typing in everything that happened? Or going to the newspaper or merely broadcasting to anybody what happened in that mediation? For most of us, just as a gut reaction, when we talk about mediation, there is an expectation that what’s said in the room is going to stay in the room. In fact, many people in their opening statements say just that. Many people actually just leave it at that, with this notion that you should feel comfortable talking because it’s not going to leave the room.

Well, in fact, privilege does nothing to address that issue. So the question is, should there be another level of discussion that’s put in the opening statements? I want to address a couple of different ways that the question of confidentiality is currently being addressed. The primary way actually is to ignore it, just not talk about it. Most statutes address just the privilege and leave the concept of whether it is confidential to the world outside.

Some try to address it by agreement. Many of you have your own agreements that you use when people sign on for mediation. It would be interesting to know how many of you include a clause that says something about that it is not going to be used in further adjudicatory process. However, how many of you actually say something in your mediation agreement that it is confidential outside of that mediation? Let’s just see a show of hands. I’d just be interested. Okay, it looks kind of like about half of you have something in there. Some people have left it to the courts. I guess for those of you who didn’t raise your hands, ultimately that’s what you’ve done. You leave the question out there for someone else to figure out what to do.

There was an interesting case in Florida, Paranzino v. Barnett Bank of South Florida, in which a contract action was brought against a bank. The complaint alleged the bank issued only one certificate of deposit for $100,000, even though the plaintiff said she gave the bank $200,000 for...
the certificate of deposit. During the pendency of litigation, the court ordered mediation. Even though Florida has always had a statute that is both a privilege statute and a confidentiality statute, a mediation agreement that they signed specified that there was going to be confidentiality for this particular mediation. When the mediation impassed, the plaintiff went public with her version of the events. She went to the *Miami Herald* and told her story as to what the bank had done, what they had offered at mediation, and why she thought it was a problem.

The trial court granted the bank's motion to strike the pleadings and dismiss the case with prejudice based on that disclosure. The appellate court held that the trial court did not abuse its discretion in imposing sanctions based on the plaintiff's knowing and willful violation of the agreement of the pertinent statute and rule.\(^4\) Therefore, it was a fairly harsh result for that individual when she disclosed this information after signing on to this confidentiality agreement.

If you haven't looked at the Uniform Mediation Act, I encourage you to get the full Act to read.\(^5\) If there is one thing that I think is extremely valuable that came out of the Act, it's these reporter's notes, which really are a terrific treatise on everything you'd want to know about the state of the law and the state of the states in terms of confidentiality and privilege.

The Uniform Mediation Act was not going to include any statement about confidentiality. It was the Association for Conflict Resolution that took a very firm stand that a uniform mediation act would not be complete unless it included a statement about mediation being confidential. Privilege was not going far enough because this isn't, after all, the Uniform Privilege Act. It is the Uniform Mediation Act. As a compromise late in the day, the drafters decided to insert one sentence in it and state that mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of the state in which the Act was enacted. So basically what the drafters did was have a discussion at the front end as to whether there is an expectation that this is going to be confidential or not confidential.

\(^4\) *Paranzino*, 690 So. 2d at 729.

What follows that is Florida’s proposal, which, as of yesterday, was passed out of both the house and senate in Florida and now is just awaiting the governor’s signature. So there are new revisions to the mediation statute in Florida to incorporate the confidentiality and privilege act that’s here.

Bill Huss: Is that now the law?

Sharon Press: Well, when the Governor signs it, it will be.

Bill Huss: Well, when he signs it. Is that essentially when it is?

Sharon Press: This is essentially what it is. There were some minor tweaks done after I submitted these materials, but this is basically what it will be. Florida has had on the books since 1987, in their family statute and a separate statute dealing with citizen dispute settlement centers and community mediation, a statement that said mediation communications, or the things that are disclosed during mediation, are privileged and that a party can prevent another person from disclosing them. It also included another three words that basically said “and confidential.” The Florida Act used to have absolutely no exceptions listed at all, even though, over the course of time, Florida knew that there really were exceptions to it. In fact, since 1988 the court has been carving out exceptions to the confidentiality very appropriately and respectfully to the process. Florida decided, however, that it was time that this was actually codified so that people going into mediation actually knew what they could expect when they went in there. Now you’ll see Florida’s new statement, bolded on page three in the draft Act, “that except as provided, an exceptional mediation communication shall be confidential and that a mediation participant shall not disclose the communication to a person other than another mediation participant or participant’s counsel.” Then the interesting sentence follows.

This is one of the reasons why the drafters of the UMA did not want to go with a stronger statement in the Act. They said, “What about enforcement? What are you going to do?” Well, Florida has gone out, once again on a limb, and now has an enforcement section. If the mediation is court-ordered, a violation may subject the mediation participants to sanctions by the court, which are the costs—attorneys’ fees and mediator’s fees. If it is not court ordered, then there is still a provision for civil remedies if a violation occurs. I imagine that this section is going to be somewhat controversial. Interestingly, I will report to you that in the
discussions before the Florida legislature, this section was adopted unanimously. There were no nay votes cast in the adoption of this legislation, even though it states, “Any mediation participant who knowingly and willfully discloses a mediation communication in violation of that section shall be subject to remedies including equitable relief, compensatory damages, attorneys’ fees, mediator fees, costs incurred in the mediation proceeding, reasonable fees, and reasonable attorneys’ fees,” and then includes a statute of limitation. So we’ll let you know how it goes. I’m sure Larry will continue to report back to you once it actually goes into effect, which should be July 1, 2004.

Josh Stulberg: Josh Stulberg from Columbus, Ohio. If a mediator comes to a law school class to talk about a case, what’s the impact of this provision on that person’s ability to share information?

Sharon Press: The mediation communication itself is what can’t be disclosed. So, if a mediator comes to a law school class and talks about sessions that he has participated in and doesn’t reveal the specific mediation communications, I don’t think that is a violation of this provision. If the mediator makes statements about what was said in a mediation, however, then there could be a potential problem. Again, someone would have to bring that to a court and raise the issue. This provision is not going to be self-enforcing. Another question?

Josh Stulberg: I wouldn’t be so sure that communication is going to be so narrowly defined by the court.

Sharon Press: Actually, you’ve got to flip back. Mediation communication is defined on page one. There’s a whole list of definitions, because as we got into this, we realized you actually can’t do this without first being very clear about what’s a mediation, when does the mediation start, when does the mediation end, what is mediation communication, and so on.

Josh Stulberg: So you think, then, that this section will protect, for example, an academic discussion of the types of mediation techniques that were used? What if those techniques involve the mediator’s appreciation and handling of non-verbal communication where, in order for the teacher to disclose the type of technique that was used, the teacher

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6 FLA. STAT. ANN. § 44.406 (West 2004).
would have to discuss the type of non-verbal communication that took place. A discussion about the process of mediation in an academic context or even in a seminar such as this requires a review of the kinds of communication that may have occurred in order to discuss the techniques that were applied.

Sharon Press: Okay.

Heather Lamoureaux: Speaking from the standpoint of a Canadian judge, I think that American courts may well interpret how this clause is to preclude some form of communication that this is for learning purposes. I would be very worried if I, as a Canadian judge, saw a section like this in our legislation. I want to know why the drafters allowed that definition of communication to be so ambiguous. Were you involved in the drafting?

Sharon Press: I’ve staffed the committee. But there are members here who were drafters.

Heather Lamoureaux: Well, then they can respond.

Bill Huss: We’ll give you their names for a price.

Sharon Press: One of the things that I think gives us great confidence that this will be interpreted appropriately is that we have fifteen years of working with our judiciary and seeing how they’ve interpreted a very ambiguous statute, and seeing how they’ve been able to provide appropriate guidance while not overstepping that line. So I think that there is great confidence in Florida that the judges will be able to interpret this statute as intended.

Mike Moran: Let me add a little thought there. I think American courts would be more receptive to an analogous argument made in defamation cases. If the mediation is described to such a degree that it can be identified easily, then I think you’re getting into that area where confidentiality may be breached. Courts in Florida established those analogous guidelines so an academic could talk about a mediation. A lot of academics are in mediation and can, for teaching purposes, describe the mediation or issues in a mediation that are not easily identifiable. Therefore, it wouldn’t be a problem.

Sharon Press: Myron’s got a defense.

Larry Watson: I worked on the draft of the Florida statute and just remembered that the reason we didn’t deal with this issue is because we didn’t think of it. We didn’t have people like all of you around to think
of stuff like this, but I agree with Bill. If you go to a class and, say, in a mediation environ, don’t name people or name a verb, there are ways you can get the teaching across without violating the confidence of, for example, Bill and Mary and Bob in this mediation or what Bob said to Mary and Bill said to Mary and that kind of stuff. I would hope that’s not going to be an issue.

**Gary Weissman:** Gary Weissman, Minnesota. I think there’s a possibility of the opposite answer happening for Josh Stulberg’s question. The remedy section you have read to us on page four only refers to disclosures by mediation participants. The definition on page one of a mediation participant does not include a mediator, which has a separate definition. Therefore, there is no remedy available against a mediator who discloses, if you read the language literally.

**Sharon Press:** Well, actually, I think that the definition is a mediation party or a person who attends the mediation, and a mediator would be a person. It was intended to include a mediator.

**Bill Huss:** He better attend, or she should.

**Sharon Press:** If there is one thing that can be said about Florida, it is that Florida has not been afraid to try things, even though the state hasn’t always gotten it right. Those of you who have watched from afar know that sometimes Florida has misstepped, but—

**Gary Weissman:** That’s right.

**Sharon Press:** But I think that it was important for Florida to try something, and we think that we had enough experience to know. It was heavily debated and discussed and we’ll learn from it. We also have a commitment to continue to revise and make it better as we learn from that.

**Bob Creo:** Bob Creo, Pittsburgh. One of the things in your definition of mediation communication was something that we went round and round about with the UMA. If you notice carefully, you talk about non-verbal conduct intended to make an assertion. Several of us at the UMA drafting session pointed out that you could have non-verbal conduct or characteristics—somebody’s scar, how they limp or whatever—and under your strict definition, a mediator could be called into court and asked, “tell me what that scar looked like at the date of the mediation, because it’s not a non-verbal communication.” Therefore, we battled that at the UMA. We were one vote away from getting that and didn’t win it. So I’m a little
surprised to see that you followed an assertion method. If you could, comment on that.

Sharon Press: I think the intention was not to make it so broad. Once civil remedies are attached to the disclosure of mediation communication, you have to be pretty narrow as to what you mean by mediation communication so you don’t sweep too many things in. I think this is a balancing act. There is a balance between how much regulation to have versus how much flexibility to allow: how much to include versus how much to exclude. Where to draw those boundaries is the constant struggle that I think we all want to figure out.

Paul Bent: Paul Bent, Long Beach, California. I notice this draft includes an aspect that’s frankly always troubled me. I would not only address this question to you but to everyone here. It talks about mediation communication and disclosing information, but one of the things that I see is that lawyers often want to use mediation as a low cost discovery method with which they are able to make use of information without disclosing the information. Has anyone tried to come to grips with how to limit the use or misuse of information for that purpose?

Mike McWilliams: One of the things that I always do at the beginning of a mediation in explaining confidentiality is to tell the parties that what confidentiality means is that what’s said or produced in this mediation can’t be used in the pending litigation or arbitration unless it’s otherwise discoverable. Then I go on to explain to them in lay terms that if it is discoverable, then merely introducing it at a mediation does not make it undiscoverable or inadmissible. There is very little that’s discovered in mediation that’s not otherwise discoverable before trial or arbitration. So why not get it out in the open early and deal with it? Hopefully it will have a significant impact on the negotiating posture of the parties.

Bill Huss: I agree. I say essentially the same thing in mediations, particularly when mediation is in the early stages and not a lot of discovery has been done. This may be used as a form of very cheap discovery, but it’s not really discovery because it’s not a deposition under oath or interrogatories signed under oath. You may classify it as investigation because you can only take those leads and follow them if discovery becomes necessary later. It’s not discovery because you cannot use it in the pending litigation. I think that takes care of that issue.

Bill Huss: Any other questions?

Melanie Vaughn: Melanie Vaughn, Baltimore, Maryland. I’m in a little bit of a quandary about the issue concerning confidentiality. I’ve been mediating full-time for a lot of years. I teach courses and train mediators, and Maryland has rules rather than statutes that govern some of these procedures, particularly in circuit court matters. What I tell people in mediation is that there are various levels of confidentiality. As a mediator I am not obliged to disclose what went on during the mediation. However, I tell them that I do disclose things as a teacher that I think would be useful in educational courses, and then I give the parties in the mediation some examples. Now most people are very flattered. I have never had anyone tell me not to talk about them in instructional settings. I also tell them that they are free to talk about whatever has happened in mediation absent a confidentiality agreement between them, except that they are not free to use the mediation in a subsequent administrative or judicial proceeding. I say that anything they may be uncomfortable about disclosing to each other—and I use the joint session as well—they should think about reserving for the private session or the caucus. Therefore, I’m missing why it’s so terribly important for people to not talk about what happens in a mediation outside of the mediation, because I want people to talk about how good an experience it was and so forth. It seems to me that tightening the constraints on what comes out of these mediation sessions may not work.

Sharon Press: I applaud you for the clarity to which you explain that to your participants in your mediations. I would say that my experience with the thousands of mediators that are certified in the state of Florida is that most of them do not explain it with that degree of clarity. What they do instead, and this includes mediators all over the country, is say, “Don’t worry, anything you say in here doesn’t leave this room.” That’s just not true. So again, where are you going to draw that line? Again, I applaud the fact that you are as precise as you are with that. I think that, in the context in which you work and the place that you work, you’re telling them exactly what they need to know.

Mike McWilliams: I think it also depends on the kind of case you are doing. For example, if you are doing a securities case, almost invariably at least one party, usually the broker-dealer, wants a confidentiality clause in the agreement because they’re worried about the precedential value of the settlement getting out and spurring other claims against it.
Bill Huss: Also, businesses may disclose their financial statements and may not want that passed around to anyone else.

Sharon Press: Do you want to take questions?

Bill Huss: Yeah.

Paul Lurie: My name is Paul Lurie, and I’m from Chicago. There’s another level of laws that encompasses this issue and governs practicing attorneys in the model codes of professional responsibility. As everybody knows, that has been addressed in the 2000 ABA commission, but so far those rules have not been adopted in most states. Chicago is not as bad as in many states, but my mediation agreements cover the subject of confidentiality and attribution. I’m in a big law firm, and we worry about having all of this confidential information attributed to other members of the firm. Some people say, “Well, mediation isn’t a practice of law.” But a lot of people think it is and, thus, subject to the model codes. That’s a whole other level of gloss on this discussion.

Bill Huss: Right. That’s another symposium.

Paul Lurie: I do cover it in my mediation agreement and get pre-waivers, which we can do in Illinois. You’ll be able to do it under the 2000 rules when and if they’re adopted.

Bill Huss: That’s a very good point, and I’m glad you raised it. I was being facetious when I said it’s the subject of another symposium, but that whole area may very well be. It seems to me that, since we are professionals, we may be called to various jurisdictions to be mediators. It may not be the practice of law in a certain jurisdiction where we’re going, but I think we ought to know. Just like in arbitration, mediation is a matter of contract almost always, and you can contract anything you want to as long as it’s constitutional and fair. For example, in some mediations, you may specifically list things that are absolutely protected and not to be mentioned or passed around and use the term “including but not limited to” so that there’s no problem with the court interpreting the language. That’s a very good point, though. We should know about these model rules and the ABA and its standards that set the standard for the profession.

Mike McWilliams: Part of my job today, which has been usurped already, was to report on the Uniform Mediation Act,\(^7\) sort of where it

is and where we think it might be going. It certainly has its problems. I gather that Florida has, in effect, adopted portions of it by including portions of it in your existing statute.

Sharon Press: No.

Larry Watson: It was rejected.

Mike McWilliams: Rejected?

Sharon Press: Yes.

Mike McWilliams: Nebraska and Illinois have adopted portions of the Uniform Mediation Act, without substantial changes. It has been introduced in the District of Columbia, Indiana, Iowa, Massachusetts, New Jersey, Ohio and Vermont.

Sharon Press: It actually passed in Ohio.

Mike McWilliams: Passed Ohio. Okay. So it’s adopted in two and pending in seven. My guess is that it’s not going to be adopted in most states where there already exists a state law or statute or rule governing what the Uniform Act purports to govern. Most states, and I think Texas is one of them, believe that their Act is far superior and more effective than the Uniform Act.

In this case you’ve got a very pervasive Act applying to a very varied profession: mediation. I suspect that all of us here are primarily business mediators, but there are community mediators, family mediators, public policy mediators, and mediators who specialize in family law. It may not involve anything commercial other than alimony. So, to devise a uniform act that applies to all of those is a very difficult thing to do. For example, the difficulty of ensuring confidentiality in a community mediation is substantial. It’s hard to deal with that unless you single it out or single out each type of mediation in the Uniform Act.

One thing that Bill touched on is the unauthorized practice of law. Now, there’s someplace where we could use a uniform law throughout the country that says that mediation, or at least commercial mediation, is not the practice of law. Some states already have that. Maryland is, as usual, crazy. The mediation is not considered practicing law if you’re a lawyer, but the chief judge of the state considers the Code of Professional Responsibility applicable to mediators who practice law. So, who’s the client in that situation? I think, as Larry said, the client is the deal. I always said the client is a process. I think we mean the same thing, because we don’t represent any of the parties.
The situation in Maryland that I wanted to briefly discuss is an example of what is referred to in your handout. In this material, it refers to what the current trends are in "court-ordered" versus "voluntary" mediation schemes. In Maryland, the court-ordered mediation that is accomplished by rule of our highest court deals with the mediator qualifications, such as forty hours and so forth. As to the process itself, however, a certain amount of discretion is left up to the various circuits, of which there are twenty-four. Therefore, you can bet that there are twenty-four variations in the process throughout the state. Essentially, the process is that a case is referred to mediation. Now, they don't necessarily advertise this, but if you don't want to go to mediation, you can opt out. Some courts require a letter and a reason. Others just let them not do it.

If you do go to mediation, it is a mandatory two-hour mediation session for which the mediator is compensated by $75 per party per hour. So at the end of the day, you've got a two-hour mediation for $300. No pay for preparation or overtime. Mediators have adopted the practice of saying that, if the parties haven't settled after two hours, they are free to agree to continue. If they do, however, the mediator will charge his or her regular rates. And most parties don't seem to have a problem with that. The notion that you can settle a case that is a commercial case with any complexity at all in two hours is crazy. The notion that you can settle a case in two hours without some preparation is nutty. Now whether we can get the court to change the rules to be more realistic remains to be seen.

I described a system in response to the question of what's the story with voluntary versus court-ordered. What I have found in Maryland and in some other jurisdictions, like the District of Columbia, where they have a mandatory program with volunteer mediators who don't get paid anything. This is not to say that they don't have some very good mediators in the District of Columbia, but very often the lawyers realize that they get what they pay for. So they come to me or somebody else and pay us to do the job. The bottom line is that court-ordered mediation is, in many cases, driving it to voluntary mediations. Because people who are familiar with the mediation process understand that, in order to have a good mediation, you've got to have a well-prepared mediator, you've got to have enough time to do the job, and you've got to pay for it. That's fine. That doesn't apply to the lawyers who use mediation as a delaying tactic.
The typical court order in Maryland says that the case has been assigned to McWilliams for mediation, and that both parties are to contact him within fifteen days to arrange a schedule. They never call, until maybe a month before the deadline to complete mediation. The deadline is set at six months or more out from the day the schedule is set. Then what they’ll do is wait until the last minute to begin mediation. I’ll say, “I can’t, I’m full for the next—I’d love to say eight months.” They then say that they’ll go to the court and get an extension. I’ll say, “That’s up to you. You can try that, or be told by the court that another mediator’s going to do it and to stick to the deadline.” It’s a process. I’d like to hear from you all about your processes in your states and what effect you think your court annexed program is having on the voluntary mediation program. Larry, what do you think?

_Larry Watson:_ This is the point that we were making earlier. The mediator’s value is introducing parties, opening the door, and then after that letting the conflict work out. Dictating how much a mediator should get and dictating the time to be spent on a mediation is just nonsensical. If the enabling legislation simply says, look, if you don’t arrange a mediation before you come to court, then we’re going to do it for you. That’s all it needs to say. After that, the lawyers don’t have to blink. They set it up, they call you, and they know it’s coming. We’re going to mediate it when we get the data. We need to mediate it long enough to be intelligent enough to make the decision. We’re going to proceed in the number of days we need to take and the manner we’re going to take. Is Pat Kaufman here from Maine?

_Bill Huss:_ I was going to ask the same question. He was supposed to be on the panel and couldn’t make it.

_Larry Watson:_ Okay. One reason we wanted Pat here is because the Maine statute that was just adopted says that you have to mediate within the first thirty days after the complaint is filed. We have court orders floating around in Florida that my good friend Jim Chaplain started fifteen years ago when it was still meditation. He’d go around to the judges in domestic cases, give them an order, and would say, “Use this to send them to mediation.” By the way, he had his name on it and his rate of $150 an hour. The judges did that back in the early 1980s. The unfortunate part of that is that $150-an-hour has stuck. Chaplain’s name is off the order, but a lot of them are out there now ordering people to go mediate
and telling us we’ve got to get $150 an hour to do it, which we just patently ignored in Florida.

*Sharon Press:* But you have to tell the whole story. You only are stuck with what the court sets if the parties don’t agree on a mediator and go and do what they’re supposed to do. They can choose their own mediator. They can select whomever they want, certified or not. They can pay them whatever they want. If they don’t, then the courts will step in to keep the case moving.

*Larry Watson:* The one place where the $150 is still in the court orders is with the federal judges, which I think is only in the middle district. John, are they still in the southern district?

*John Salmon:* $175—

*Larry Watson:* Oh, you’re at $175? That’s Miami versus Orlando.

*Mike McWilliams:* The same thing is true in Maryland, Sharon. That is, while again not advertised, the parties are free to not go with the court appointed attorney and may select their own.

*Jack Cooley:* I’m Jack Cooley from Chicago. Bob Creo asked me to say a few words about good faith participation in court mandated mediation. I was the chair, and have been the chair for a couple of years, of the mediation committee of the American Bar Association’s Dispute Resolution Section. About a year ago, Bruce Meyerson asked me to look into this issue because we needed a policy about it. I didn’t even know it was a problem until I started reading more than a hundred pages of law review articles that have been written about this issue of good faith. First of all, what is good faith? That’s very difficult to define, and there aren’t any good definitions out there. In fact, some courts have said it’s undefinable. To come up with a policy, however, we looked at three different policy issues. Oh, by the way, good faith is not only for the advocates in mediation but also the mediator, vis-à-vis the advocate. The issue there is what the mediator can disclose to court administrators or the court itself. So there were three policy issues.

The first is what conduct can be sanctionable. The second was what a mediator can disclose to the court about the mediation, and the third was what kind of action can we take to educate the judiciary and the bar about design of a really effective mandated mediation program.

On the first one, what we came to conclude was that the type of conduct that should be sanctionable should be objective conduct, not
subjective. For example, objective conduct would be a rule that says you have to attend the mediation session. That’s really kind of black and white because, if you don’t show up, that could be sanctionable. But what many courts have done is make very subjective conduct sanctionable. For example, a rule says you have to come to a mandated mediation with sufficient settlement authority. If you don’t, you can be sanctioned, or you have to come fully prepared, or you have to make some kind of offers during the course of the settlement. Because we think those are subjective, we’ve decided that only objective conduct would be part of any policy that the ABA would support.

Then as to what the mediator can report to the court, Bruce Meyerson wisely pointed out that that question is answered really by the Uniform Mediation Act. So that’s what we ultimately adopted, at least at this stage, for that policy issue. It will be harmonized as soon as, I guess, all the states adopt that Uniform Act, which we hope they will soon.

As to the third policy issue, John Lande from the University of Missouri has written an excellent article about how the bench and the bar can cooperate to design these kinds of programs and have periodic meetings to discuss the effectiveness of the programs.8 That’s pretty much all I had to say.

Bill Huss: That’s great. Thank you. On the bottom of page four of my materials, I set out just a very brief paragraph or two about Maine. Maine is really tough, since the issue of good faith is to be litigated if it’s raised. I don’t know what they’ve done and what the case law is in Maine now, but you might want to check that out.

Arthur Pearlstein: I’m Arthur Pearlstein from Washington. My office is in Washington. Some of you may be happy to know that I live in Baltimore, and it’s a great commute, actually.

I don’t know whether to call it a question, a comment, or maybe a challenge to all of you, or at least to some of you. I personally—and it is personal as opposed to anything to do necessarily with my affiliation—I personally think that court-annexed mediation, or at a minimum the term and probably the whole concept, is a really bad idea for the whole mediation profession and for the field of ADR. I like to point this out

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8 John Lande, Using Dispute System Design Methods to Promote Good-Faith Participation in Court-Connected Mediation Programs, 50 UCLA L. REV. 69 (2002).
every opportunity I get because I think that what happens is that, in long run, it starts out as a nice idea. It can even work in some situations, but eventually what it means is that the courts become (a) the gatekeepers of dispute resolution, which I think is not what we want to do. (b) Perhaps more importantly, it limits the competitors and major competitors in the field of dispute resolution, which, in effect, squashes out what could be a really burgeoning field. The people in this room are among the very few in the country who are actually making money from mediation. I wonder if we should be talking about ways in which the mediation profession, the ADR profession, can capture more of the field and keep the courts more out of it.

Let me give just a couple of examples. One is to encourage laws and gradual changes that make litigants pay more of the price for the courts and for what they are taking—the resources and so forth that they're taking away, and penalties for bringing frivolous litigation. That is one concept. Another is, rather than mandating mediation, if you want to have the courts do anything at all, have the lawyers come in. The lawyers are a big part of the problem. But have the lawyers come in, make them bring their clients, and explain to both lawyers and clients that there are other options out there, including mediation, arbitration, early neutral evaluation. Just give them a whole variety of options and tell them to educate themselves by taking a closer look at it.

The last little thing I wanted to say along the lines of confidentiality—because I think it's related to the whole idea of "the big, bad lawyers"—I think what you're going to see happening with these confidentiality rules is that clever lawyers, and even not so clever ones, will get around it by bringing the mediator in as a party in the litigation claim. You know, they could make a stretched claim for malpractice, in which case you then usually can get around any issue of confidentiality. After all, you have to talk about what went on to prove that there was malpractice.

**Bill Huss:** The answer to your questions are no and maybe.

**Arthur Pearlstein:** Bob Creo asked if I could explain my role at the Federal Mediation and Conciliation Service, because most people in the room may not know that. I want to preface this by saying that my comments do not represent the opinions of FMCS, nor do they represent the opinions of the United States Government. They are my personal opinions. Our chief of staff is sitting next to me. I am the general counsel
of the Federal Mediation and Conciliation Service. I am also a commissioner of mediation there.

Bill Huss: Well, thank you. Sharon, do you have some comments you want to make in response to that, too?

Sharon Press: I do actually. For those who didn’t read what my background is, I’m the director of the Dispute Resolution Center, which is the state office for the court connected programs in Florida. So the comment you probably would expect is that I adamantly disagree with what was said. You’d be surprised to know I actually agree. I actually like that terminology “court-connected” better than “court-annexed.” I think it’s more descriptive. I think that most of the programs that are operating right now—although they started out as annexed, in other words, that they’re part of the court—they really have moved more to be connected to the court, sometimes in very close ways and sometimes in looser ways. When I arrived in Florida fifteen years ago, I expected to be there three to five years and then I’d get mad at Tallahassee, but I also did not expect that running a court program would be interesting and viable over the long haul. My time frame was off, but I still think that you’re right. Ultimately I believe it was a good thing for court-connected mediation, court-annexed mediation, to start, because I don’t think that the field would have been able to grow in the way that it has and to get the education out, and we did that. I mean, we did that in a very big way, in an amazing way. The number of people who know about mediation and who have been involved in a mediation could never have been achieved if we had continued on in the purely voluntary way that things were moving. However, having said that, ultimately I think that in order for mediation to stay true to what it is, the courts have got to get out of it. I don’t know what the time frame is for that to happen, but it may be sooner than later. So I agree.

Bill Huss: Mike, what do you have to say about that?

Mike McWilliams: I agree with Sharon to an extent. It depends on the state, but I think eventually the marketplace is going to drive the court out of the voluntary mediation market. If you have a state that does no more than what Larry suggested earlier, which is to say, the judge encourages the litigants to try mediation, then gets out of the business, and lets them go pick their mediators and set the parameters and so forth, that’s one thing. But there are too many court-connected programs around that
are messing with the process to the extent that lawyers and clients, when they get involved in the mediation, are beginning to realize that they’re better off not in the court system but out in the voluntary programs. I also agree with Sharon about the notion that mediation wouldn’t be where it is today in terms of people being familiar with it or its growth if there weren’t these court-connected programs.

In the states that have had it—like Florida for fifteen years or so, California, and Texas—mediation has grown by leaps and bounds. In states like Maryland, where our rule has only been in effect for a few years, mediation is just beginning to grow. So that, in and of itself, mediation was not meant or shouldn’t have been meant to clear court dockets, which is one of the main reasons it was adopted in many states. The benefit that I don’t think most framers expected was the educational benefit in the community to the process of mediation and its rapid growth and popularity.

Bill Huss: I want to respond to your very well thought out, well reasoned observation. What I add to that is the law of unintended . . .

Mike McWilliams: Consequences.

Bill Huss: . . . consequences. Sometimes the tougher, the more meticulous, the more onerous the court program is, the more it motivates people to go into private entrepreneurial programs. The example that I have in mind is the California disclosure requirements for arbitrators, which is horrendous because it gives the participants who lose an arbitration, for example, the motivation to go looking through the arbitrator’s background to say, “Aha, he didn’t disclose this, we’re going to get a motion on the calendar to set it aside.” Then the arbitrator faces malpractice and it’s a nightmare. So what happens? A lot of arbitrators don’t arbitrate anymore. The [National Association of Securities Dealers] is in a big fight with California over whether or not those rules apply to NASD arbitrators. So unintended consequences will, I think, act or react the way Mike is saying in the marketplace positively. And you had a question?

Steve Cerveris: Steve Cerveris from Los Angeles. I just had a comment. Along the lines of what’s been discussed, I sit as a member of the Los Angeles Superior Court’s ADR committee. One of the problems we’ve been having in a very competitive market in a very large court-annexed program is that they’ve been running out of mediators by the
fifteenth of every month. There is a tremendous need there, and the court has also been having some significant budgetary crises.

A suggestion that was brought to the court ADR committee, which I'm proud to say was adopted last week, is a combination of these programs. We created a tiered program—and granted, it still only provides a payment of $150 an hour—but it creates a built-in apprenticeship program for new people who want to get into this profession. It's something we haven't discussed and something that I personally feel very strongly about. Having not sat on the bench for twenty years, I had no segue way into this career other than through the court-annexed program.

The panel that we just set up, which hopefully will be into effect by July of this year, will provide that you have to participate in twenty-five mediations after having taken appropriate training. Those mediations will be conducted the way they are now, which is three hours of pro bono, including prep time. After that, you can charge whatever the market will bear. After you have completed those first twenty-five mediations, you can then enter into the second tier. The second tier provides for $150 an hour, party paid, for the first three hours. After that, again, you will be able to charge what the parties are willing to pay. Already the applications are rolling in. People who used to be a part of this panel, but who felt they'd given too much away, are coming back into the program, even just to do one or two a month, because they're finally being recognized. There are ongoing requirements, that you'll have to do four pro bono mediations as a member of the second tier panel, just so the panel doesn't fall by the wayside.

To me, the incentive is that it's going to bring new people in. It's going to provide for an apprenticeship program. It's going to raise the bar because we'll have continuing education requirements to be a member of the second-tier panel. It's not perfect but it's evolving. My personal concern was that I don't want to close the door. I would never be able to sit here among these people and would not have been able to give up my law practice five years ago were it not for the court-annexed program.

Bill Huss: Exactly. I think everybody here should know that the Los Angeles County program used volunteer mediators. They didn’t get paid anything. If the case didn’t settle after three hours, then if the parties wanted to continue, they would continue at the mediator’s regular rate. But I can see why the system ground to a halt, because if I sit on that panel
of mediators and do one every two or three months, I can’t give away that much of my time. So I’m glad to hear that that’s being done.

Yes, a question over here.

Mike Silver: Mike Silver, Toronto, Ontario. We have a mandatory program in Ontario as well, and I think a lot of us got our start through it. There’s a certain amount of gratitude by the profession towards it, but, again, beware of unintended consequences or beware of what you wish for, you may get it. What’s happening now is the rate for mediators handling a mandatory mediation is essentially $150 an hour where there are two parties. It goes up a wee bit if there are more parties but not substantially. That was set in 1999. It may have been a little more appropriate in Ottawa than it is in Toronto, because expenses in Toronto are probably the highest in Canada. It’s certainly inappropriate in 2004 and 2005. Efforts by the mediation profession to get it raised have completely met with failure across the board.

My point is, now there are a number of insurers who are adopting as a policy that they will only use roster mediators who can only charge the mandatory rate. I think a lot of us from Toronto here are probably off roster. Technically that allows us to charge whatever we want. But I am aware, for example, certain insurers—and in Canada there are every year fewer and fewer of them because they are eating up one another—are adopting this policy. Now, ultimately, I think it’s going to hurt all the mediators out there, because $150 an hour, in Toronto at least, is less than an articling student would get billed out at. So what does that say about our profession and our skills? I’m not sure. The time may come when the profession has to organize itself better than it has before and do something about that mandatory rate. I think that can be one of the big downsides of mandatory mediation.

John Phillips: John Phillips from Kansas City. I’m not sure that we’ve defined what court-annexed mediation really means in terms of mediators’ rates. It sounds like with many of the plans you have set rates. In the jurisdictions in which I practice, which are two federal courts in Missouri and one in Kansas, we do have a court-annexed plan, but attorneys are permitted to set their own rates. It is a marketplace where you can get a mediator pro bono, which I do on occasion but not very frequently because I’m not asked. There are a few who charge low rates. Most of us charge our normal rate and don’t have a problem getting that.
I contrast that to our state court practice in both Missouri and Kansas, where there is not a court-annexed plan. There we have, unfortunately, very few mediations. We’re light years behind when you don’t have a court-annexed plan at all that encourages mediation. In federal court, however, if you have a good court-annexed plan that allows mediators to get paid for their time appropriately, I think it’s been very successful.

Sharon Press: I think that you’re right. Just saying a court-annexed or court-connected program exists doesn’t necessarily say what that fee structure is going to be.

Bill Huss: In doing the little survey that I have included in my papers, I did not come across any system that prevented, as Mike calls it, the marketplace. I agree with you, Sharon. This is the way that I think it pretty generally is going.

Larry Watson: I just want to say quickly—since my mandatory plan is getting blasted here—you don’t have to dictate a rate to be a mandatory plan. That goes too far. The value we were talking about is just—if you don’t mediate this yourself, if you don’t go through a facilitated settlement process before you—we’re not going to let you in the courtroom. You can do it yourself or we’ll set it up and do it for you. That’s all you need; after that the market takes over.

Today in Florida, I’d be willing to bet you could count on the fingers of one hand the number of state court orders to mediate that are actually entered in any month in the state or if ever. Nobody orders them. They don’t have to order them. It’s in the culture. I agree with you that ultimately I’d like it to be so deep in the culture that we don’t need to worry about annexing and mediating or connecting or whatever, but I’m not real sure that we’re there yet. I’m not real sure that the trial bar still doesn’t have a little of that I-ain’t-gonna’-blink-first mentality. If I call up the other side and ask let’s set up a mediation to try to negotiate a settlement, they’re going to go hoo-ha at me since I’m showing weakness; therefore, I’ll never do that. I don’t know that that will ever go away.

Sharon Press: Well, that’s good because I don’t have another job lined up yet.

Bill Huss: All right. One question down here. Mr. Lurie.

Paul Lurie: Just a request to the people on the programs tomorrow. Perhaps you want to discuss the marketing implications to mediators of this discussion. For instance, should people be tired enough of these core
programs and subject to the mandatory fees in states where the parties are free to go to private mediation? What are the commercial implications of some of the choices? I mean, there are some very interesting issues here about the business of mediation, and we have a lot of experts tomorrow that are capable of talking about this. I personally would like to hear about it.

Bill Huss: Good.

Judy Meyer: Judy Meyer of Philadelphia. Since I'm sitting next to Paul, I would say, because I will probably forget to say it tomorrow, that one very good use of signing up for the mandatory court-annexed programs is that it is cheap or free PR for the mediator. Basically, you can sit there with the lawyer from whatever law firm and show your stuff, hand them your card and say, "By the way, this is what I do with the other twenty-three hours of my day at a different rate."

Bill Huss: Thank you.

Paul Lurie: I could just start the discussion going. It depends on whether you are Louis Vuitton or you are selling some China rip-off of your product. I think there's a—you know, how you want to position yourself in the marketplace . . .

Bill Huss: Right.

Paul Lurie: . . . is implicit in this discussion that Judy and I are having and I'd like to hear more about it.

Bill Huss: Well, we can do that probably tomorrow. Who's talking back there?

Mike McWilliams: Bob Jenks.

Bob Jenks: The business practices and the marketing associated with that are going to be covered by a panel on Saturday morning.

Bill Huss: Good. That means we all should be here Saturday morning. Okay. Thank you all for coming. I want to thank especially Sharon Press and Mike McWilliams for contributing to our program today.

Mike McWilliams: And I think Bill did a perfectly adequate job.
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