

Humor in Negotiations & ADR

Cartoon Contest Caption Winners
from the
ABA Dispute Resolution Magazine

John Barkai
University of Hawaii
William S. Richardson School of Law



"It may be too late for active listening."

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**Humor in Negotiations & ADR:
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Professor John Barkai
William S. Richardson School of Law
University of Hawaii
Honolulu, HI 96822

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Introduction and Acknowledgements

This book contains over 300 “winning” captions for more than 50 cartoons used in cartoon captioning contests that were published over 14 years in the Dispute Resolution Magazine (DRM), a quarterly publication of the American Bar Association’s Section on Dispute Resolution. Also included are another, almost 200, great captions that never made it into the magazine.

I was the editor of the ADR (Alternative Dispute Resolution) Cartoon Captioning Contest that ran in the ABA’s Dispute Resolution Magazine (DRM), “The Lighter Side” Section, from 1997 to 2011. I ran the captioning contest and was the sole judge of the captions.

“Relevance to ADR theory and jargon” was part of my unwritten criteria for selecting “winning” captions. Other criteria included: Did the caption bring a big smile to my face? Did the caption make me laugh out loud? I wanted captions which useful for teaching and training. Most of the winning captions should be understandable to anyone who negotiates, but a few captions do require a deeper understanding of ADR concepts and literature mentioned in the Glossary and ADR Terms of Art found in the back of this book.

My main interest in publishing this book was to get the cartoons and captions into the ADR community, believing they could be useful for ADR teachers and trainers for classes and trainings. Also, any negotiator, mediator, conflict resolver, or anyone who ever had a dispute (that’s all of us) might get some laughs and inspiration from this book.

This book has been published with the cooperation of the American Bar Association’s Section on Dispute Resolution and the three artists who created the cartoons. Artists W.B. (Will) Park, Jeff G. Dionise, and Dan Mazanec, drew cartoons without captions for the contests. The ABA and the cartoonists have given me permission to use those cartoons for this book. We all acknowledge that the cartoons were originally published in the ABA’s Dispute Resolution Magazine and that the ABA Section of Dispute Resolution, and I, may promote and sell this book.

I greatly appreciate the thousands of people who entered captions in my contests. Special thanks goes to Professors Nancy Rogers and Richard Rueben who offered me the opportunity to run the cartoon captioning contest in the Dispute Resolution Magazine, - to the artists, Will Park, Jeff Dionise, and Dan Mazanec, who gave me permission to use their cartoons for this book, - to Gina Brown, the Associate Director of the American Bar Association, who helped me work out the publishing arrangement with the ABA, - to John and Livia Barkai, my father and mother, for passing on to me their sense of humor and

good nature, - and to my loving wife Linda Martell and my twin daughters, Hope and Leah, for their support with this and many other projects. I especially want to thank

Cartoon captioning contests started more than 100 years ago. Today, by far the most popular cartoon captioning contest is the New Yorker Magazine's Cartoon Caption Contest. The New Yorker contest started in 1999 as a feature within the annual cartoon issue of the magazine. That contest was then repeated yearly through 2004. In 2005, the New Yorker's contest was turned into a weekly event.

My cartoon captioning contests started in 1980 when I first tried a captioning question on my Litigation Workshop final exam at the University of Hawaii Law School. I continued to use captioning contests in my litigation, evidence, and negotiation/ADR classes for the next 40 years at the Law School as well as my classes at the University of Hawaii's Shidler College of Business and at the Japan American Institute for Management Science (JAIMS). In fact, I expect to publish another cartoon captioning contest book, *Humor in Trial Evidence: Cartoon Contest Caption Winners and Challenges from My Evidence Class*, in the near future. The current draft of that evidence cartoon captioning book has about 50 cartoons and more than 700 original captions.

Why Use Cartoons in a Class or Presentation?

There are many reasons to use cartoons in a presentation. If I were writing a law review article about the topic, I would include references to many prior academic publications that tout the use of humor and cartoons from primary education through college and professional schools, and then on to presentations to adults. The academic literature about humor and cartoons says that humor and cartoons promote learning, capture attention, make connections with the subject matter, increase retention, promote creativity and critical thinking, create social cohesion within the learning group, build a sense of community, provide a tool to assess whether the audience understands the material, promote health, reduce stress, exercise the heart, increase activity within the immune system, and keep the audience engaged. Laughter is both good medicine and good teaching.

If you are teaching negotiation, mediation, arbitration, communication, or a related topic, you can search the index for captions on various topics.

Regarding Copyright – there is no copyright for the captions, but the cartoons are owned jointly by the artists and the American Bar Association. However, the American Bar Association, the artists, and I, grant you permission to use these cartoons and captions for teaching, training, general promotion of negotiation and ADR, and other non-profit activities, which was a major reason for publishing this book. You do not have permission to use the cartoons or captions for general commercial purposes.

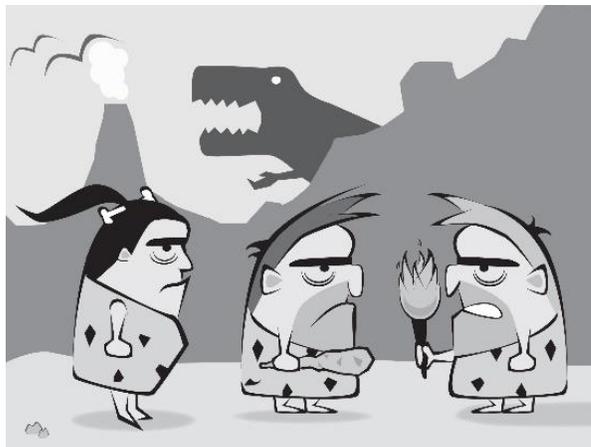
I hope you enjoy this book. The book and the captions are one of the most creative projects I have ever worked on and are part of what I call my legacy projects.

Aloha,

A handwritten signature in cursive script that reads "John Barkai".

John Barkai

Doing ADR Since 6 B.C.



Art by Dan Mazanec

Yes, I have been involved in ADR since 6 B.C. – 6 years” Before Computers” were used by faculty and staff at the University of Hawaii.

No, I wasn’t really a caveman at the start of my ADR work, but I was part of the first training class in the fall of 1979 for the Neighborhood Justice Center (NJC) of Honolulu. Immediately below is a picture of our mediation center’s graduation class that was trained in Honolulu by Edith “Edie” Primm from the Atlanta Neighborhood Justice Center. Over the next four decades, three members of this group, David Chandler, Bruce Barnes, and myself, would go on to teach, train, and do research on negotiation, mediation, and ADR at the University of Hawaii Law School, as well as across the United States, throughout the Pacific, Asia, and other places in the world. Attorney William “Bill” Burgess (standing on the far right) was the founder of mediation center in Honolulu and had the foresight to start and support the mediation center its early years.



That is me, in the back row, third from the right, with long hair, a beard, and sunglasses. Just in case you are having some problems recognizing me, on the next page is a blowup of my face from that group photo.



When I show the above photos in my mediation classes, I like to say, “Mediation has changed a lot in 40 years - and so have I.” See the back cover of this book for a Cartoonized pictured of my much older, but younger looking self.

How to Use This Book?

How to use this book? That’s simple. Just read it. Have fun.

If you feel creative and want to play along, just pretend you are entering a cartoon captioning contest. Each cartoon is presented two times in the book. First, the cartoon is presented with no caption, but with words that might provide a trigger your caption. After you have thought of a caption, turn the page and see a smaller version of the cartoon with several “winning” captions and sometimes a number of other good captions which are labeled NIM which stands for “Not In Magazine.” NIM captions were either suggested after the magazine was published or it did not make it into the original list of "winners."

When the cartoons originally ran in the Dispute Resolution Magazine, I usually selected three or more winners which I thought were the best captions - sort of “Win Win Win,” etc. I have used a lot of these cartoons and the captions in my own teaching and trainings. I also like to use optical illusions and talking stuffed animals in my classes. See my article, "Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil," 75 Nebraska Law Review 704 (1996) which explains how I use optical illusions and talking animals in my teaching.

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1997 Fall, Art by W.B. Park



Challenge, duel, Roman Forum, spectators, fight, lions

Write your caption here.

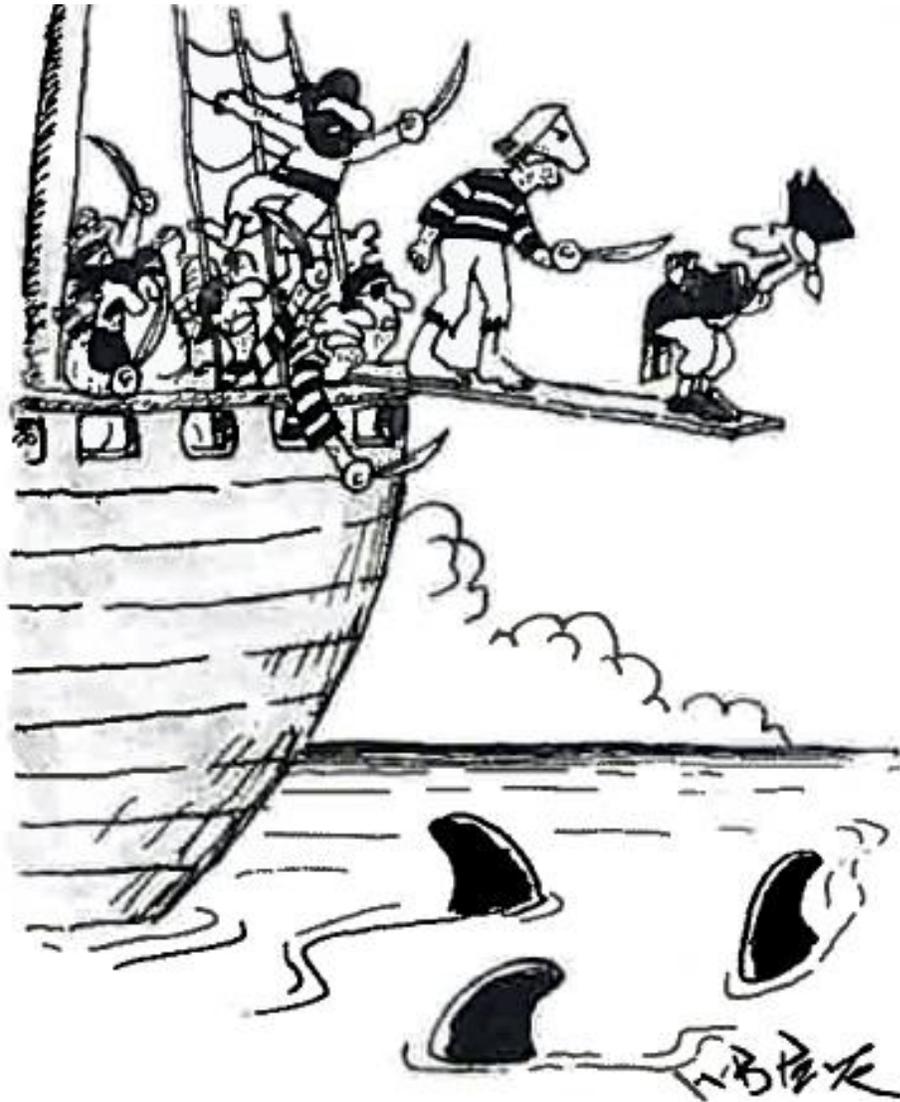
1997 Fall, Art by W.B. Park



- 1) Is that offer to mediate still open? - John Van Winkle, Indianapolis, IN
- 2) This isn't what I quite envisioned by the ADR challenge. - Elizabeth Kent, Honolulu, HI
- 3) My attorney says I shouldn't back down. What does yours say? - Emanuel Plesent, Mineola, N.Y.
- 4) Breaking an impasse in 310 BC. - Devon Catalan (NIM)
- 5) "Our mediator is late. Should we start without him? - Carla Class (NIM)
- 6) "Well, I think we can agree on one thing. We need a new mediator! - Loren Seehase (NIM)
- 7) "Ah, now I get why you wanted to mediate." - Denver Coon (NIM)
- 8) "Well Fred, I think this is a good time for me to step out to the balcony. It's about to get pretty crazy in here. - Melissa Humphrey (NIM)
- 9) "Maybe we should take a break and try again tomorrow. - Grant Nakaya – (Impasse breaking technique) (NIM)
- 10) "Remember that great time we had together in college? - Natalie Pagoria (Building rapport) (NIM)
- 11) "I'm kind of feeling under the weather today. Can we do ADR instead? - Tabitha Chiu (NIM)
- 12) "Let's just agree to disagree. - Elizabeth Loomis (NIM)

* "NIM" means "Not in Magazine." This caption and others with this designation were not published the ABA Dispute Resolution Magazine with the cartoon above. Such designated captions were either suggested after the magazine was published or it did not make the original list of "winners." However, such captions are included in this book because they are too good not to make available to others.

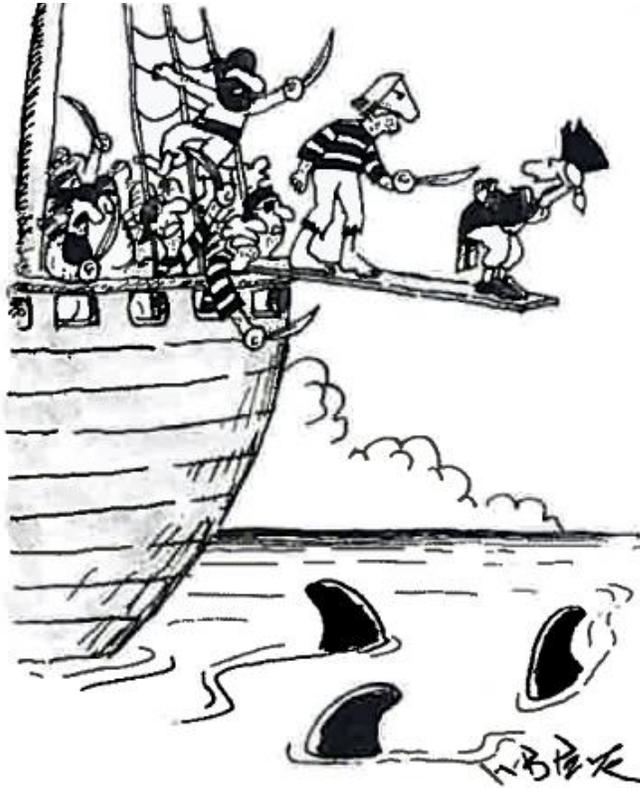
1997 Winter, Art by W.B. Park



Jump, sharks, plank, out on a ...

Write your caption here.

1997 Winter, Art by W.B. Park



13) "I take it that you are striking me from the list of arbitrators." - Jim Komie, Chicago,

14) "I'd love to stay and chat, but I have to meet with my attorneys right now." - Doug Luciani, Honolulu, HI

15) "I would rather be with you, Mr. Mediator, than with the sharks of advocacy." - Detler Luhrsen, Munich, Germany

16) "I said I wanted a panel of mediators - not meat eaters." - Lisa Roscoe

17) "Come to think of it, perhaps mediation is not such a bad idea after all." - Erick L. Hill, Omaha

18) "I thought you said that I was going to the mediators - not the meat eaters."
- Sara Dunhant Kraskin

1998 Spring, Art by W.B. Park



Ground rules, split the baby,
different approach, tools, position,
law school, BATNA, separate

Write your caption here.

1998 Spring, Art by W.B. Park



19) "Before we begin, let's have some ground rules: no dicing or mincing words, no flaring up and definitely no skewing." - Wai Pong Wong, Singapore

20) "It appears there may be some misunderstanding about the basic ground rules of mediation." - Sara Dunhant Kraskin, Chevy Chase, Md.

21) "Of course, you know that in arbitration 'splitting the baby' and 'burning bridges' are just metaphors." - David Brecher

22) "This is mediation. There was no need to bring your discovery tools." - Ronald I. Raether

23) "I see your party is not prepared to budge from your position." - Jessica Ear, Honolulu

24) "I've been through three years of law school. I'm afraid your threat will have to be more painful than that." - John Brenstrom, Novato, CA

25) "Despite what you may have heard, arbitration is not about splitting the baby."
- George H. Friedman

26) I see you gentlemen have already decided on your BATNA!" - Anonymous

27) "What I'm hearing you say is that the money isn't enough by itself. You've got to have the pound of flesh, too." - Kenneth L. Bennight, San Antonio, Texas

28) "I didn't mean to literally separate the people from the problem." - Dawn Kawiasaki, Honolulu

28a) "You need to advocate differently in mediation than in the courtroom." - Hal Abramson

1998 Summer, Art by Jeff Dionise



Fish, water, tank, leaking

Write your caption here.

1998 Summer, Art by Jeff Dionise



29) "I sure hope these guys aren't using mediation as a fishing expedition." - Sara Dunham Kraskin, Chevy Chase, Md.

30) "I'm telling you it's just a red herring." - Felice Glennon Kerr, Wilmington, Del.

31) "Just brainstorming here, Mr. Rumgood, but if I could keep the little B.B.s out of your cup, could you live with the flavor?" - John R. Van Winkle, Indianapolis, Ind.

32) "Forget the health hazard. Just make sure none of the staff are marine life activists." - Catherine W Ward, Memphis, Tenn.

1998 Fall, Art by Jeff Dionise



Position, final, jump, talk, out on a ledge

Write your caption here.

1998 Fall, Art by Jeff Dionise



33) Just so I'm clear when I meet with the other side, this is definitely your final, drop-dead offer. - David Scott Ross, New York

34) That was just their opening offer. We don't have to accept it. - Sara Dunham Kraskin, Chevy Chase

35) Sir, excuse me, this won't settle anything. If you jump we'll just have to find another mediator. - Catherine Ward, Memphis

36) Mr. Thistle, are you sure that's your BATNA? - Susan Grody Ruben, Cleveland (NIM)*

37) When I said that each party might have to go out on a ledge to reach a compromise, I didn't literally mean... - Carol H. Gold, Mount Laurel, NJ (NIM)

38) OK, the good news is the parties are talking and there is one point of agreement. The bad news is they've agreed they want you to jump. - Evan Fray-Witzer, Boston (NIM)

1998 Winter, Art by Jeff Dionise



Monkey, hanging around, don't
worry

Write your caption here.

1998 Winter, Art by Jeff Dionise



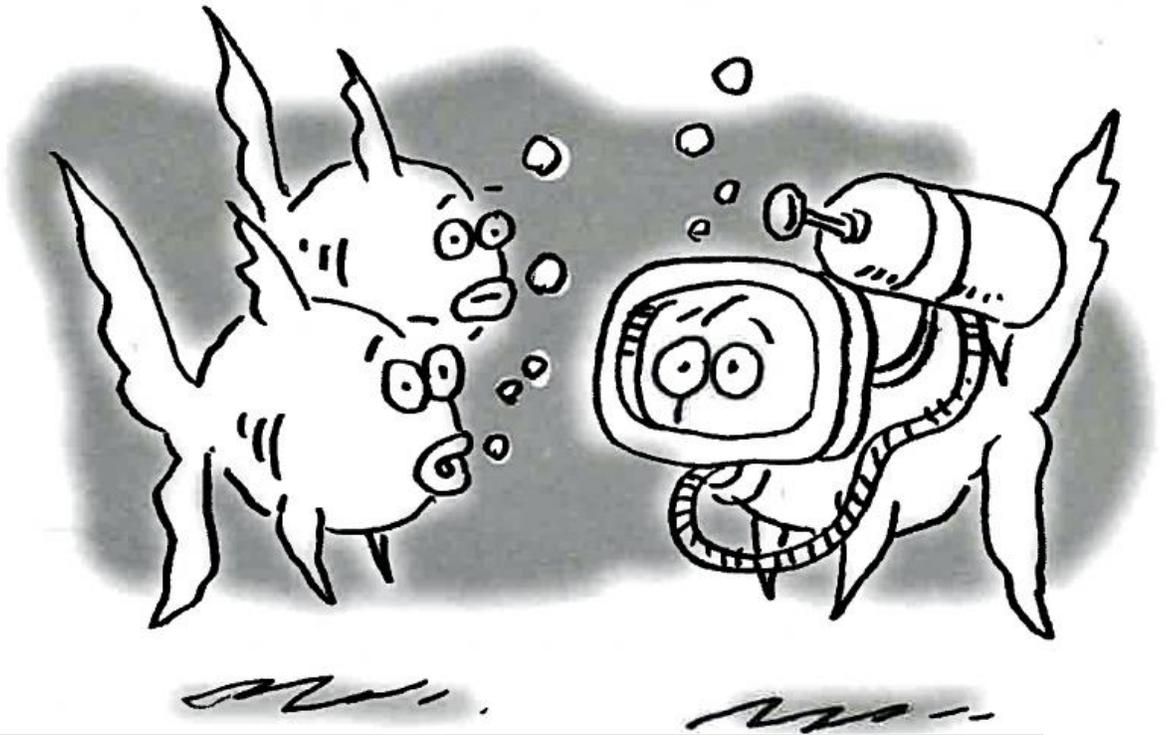
39) "Don't worry about confidentiality - his name is "Speak No Evil." - Cathie Kreiner, Cincinnati

40) "How did I come to be a mediator? I kept hearing that a trained monkey could settle most cases so I thought I'd give it try." - John R. Van Winkle, Indianapolis

41) "You're the one who said you wouldn't settle until monkeys stood on their heads and spit wooden nickels." - Mary Cardwell, Honolulu

42) "So if you are the mediator, who's the monkey in the middle?" - Stephen A. Rothschild, Toledo

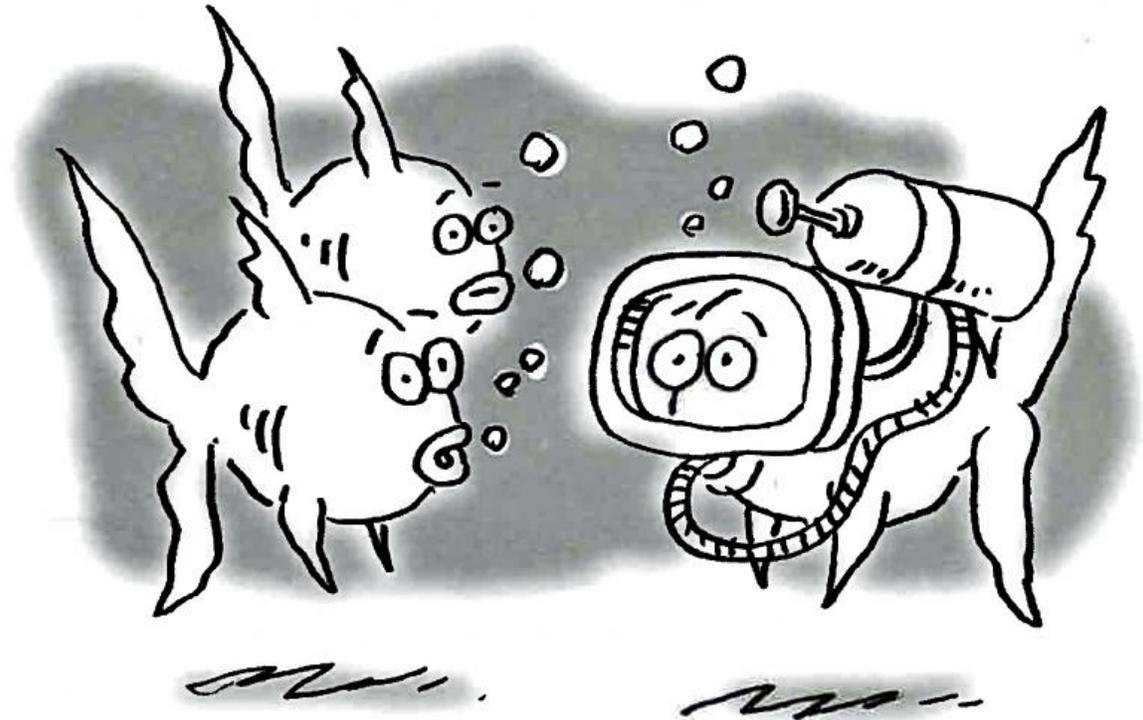
1999 Spring, Art by Jeff Dionise



SCUBA, tank, water, air, element

Write your caption here.

1999 Spring, Art by Jeff Dionise



43) "Is that all your lawyer got you from the Exxon settlement?" - Amy Self, Honolulu

44) "I'm concerned that our mediator is feeling like a fish out of water." - Sara Dunham Kraskin, Chevy Chase

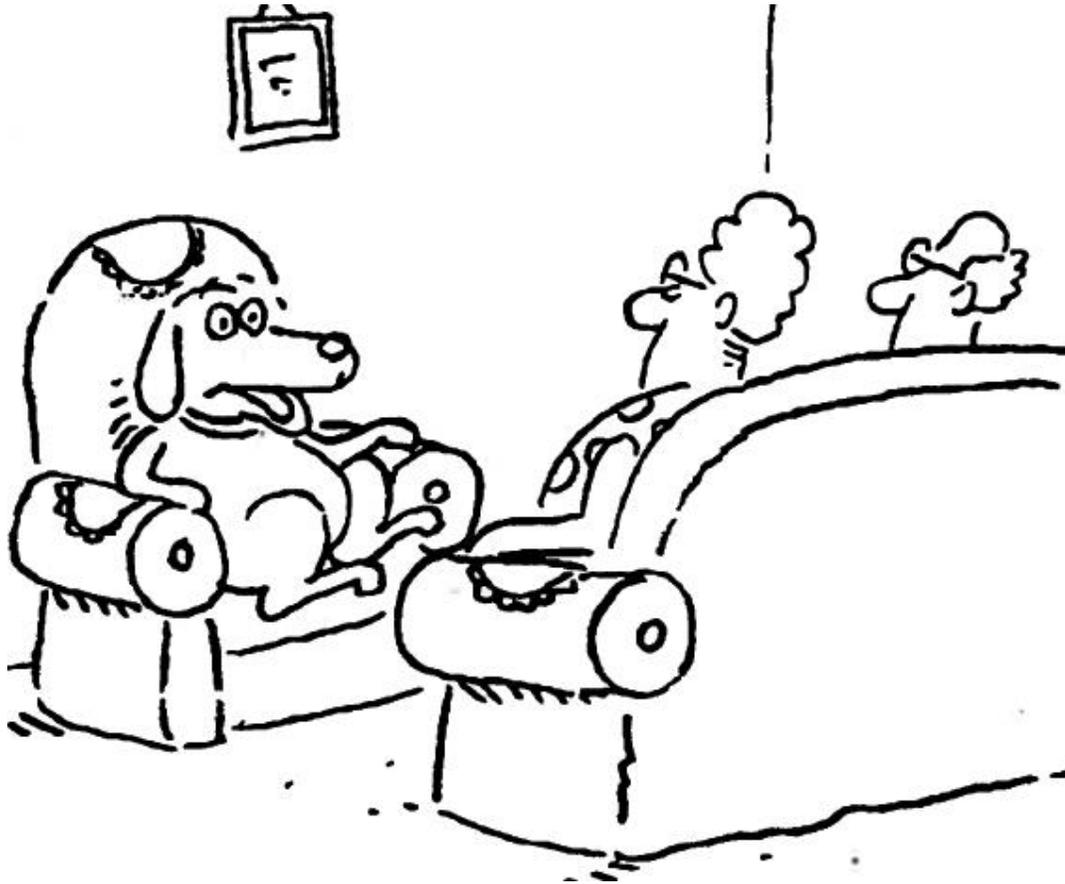
45) "Milton, today we start arbitration, not air filtration." - Tina Zipp, Honolulu

46) "I think you need to renegotiate the terms of the new school safety standards."

- Candice Roark, Apple Valley, Minn.

47) "That's Joe. He refused to mediate his dispute with the SCUBA diver, and the judge awarded him the SCUBA gear." -Cindy Hironaka, Honolulu

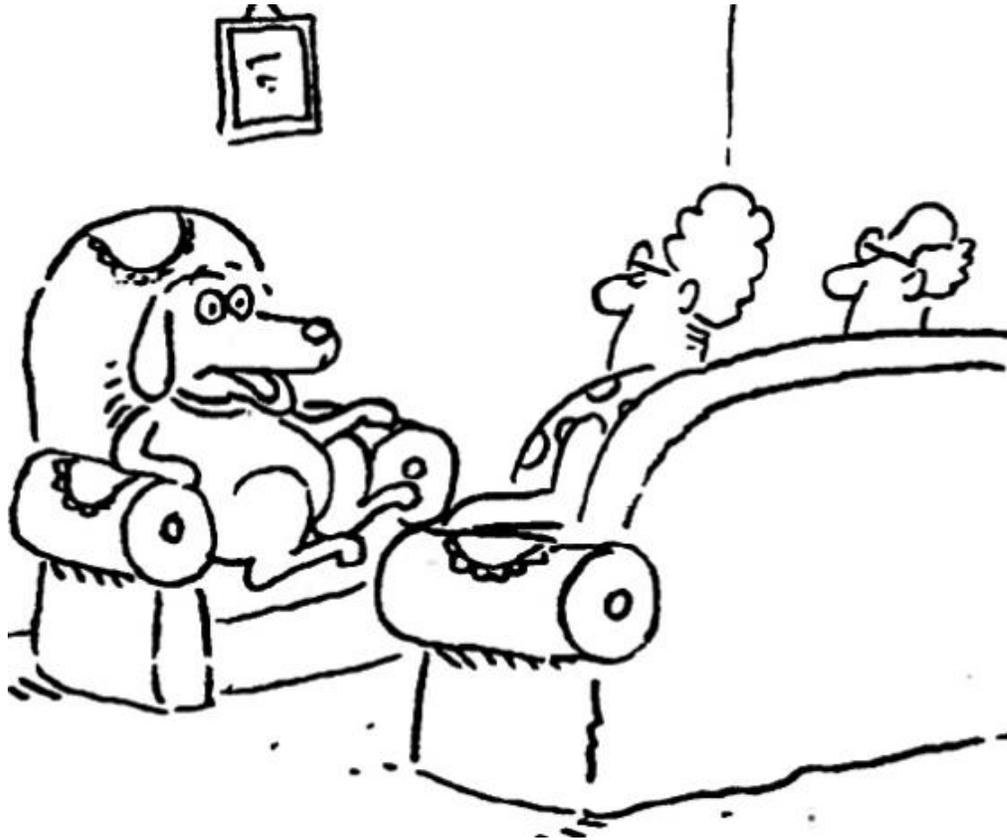
1999 Summer, Art by Jeff Dionise



Talk, biscuit, interests, home

Write your caption here.

1999 Summer, Art by Jeff Dionise



48) "OK, how about three biscuits a day in exchange for not leaving you 'presents' in the bedroom?" – Kristine Kinaka

49) "if you want someone with dogged persistence, who will hound your adversary to the end, then I am the lawyer for you." - Linda Alpert

50) "I assure you ma'am, I am a neutral arbitrator. The old saying that 'a dog is man's best friend' will not impact my decision in any way." - Duane Seabolt

51) "I may be just a mutt, but even I know that there should be an odd number of arbitrators." - Mark Kashdan

52) "Look, we both want that fire hydrant, and one of us is going to have to compromise." - Zoe Hammatt

53) "I am noticing some hostility about that accident on the carpet. Tell me about that." – Anonymous (NIM)

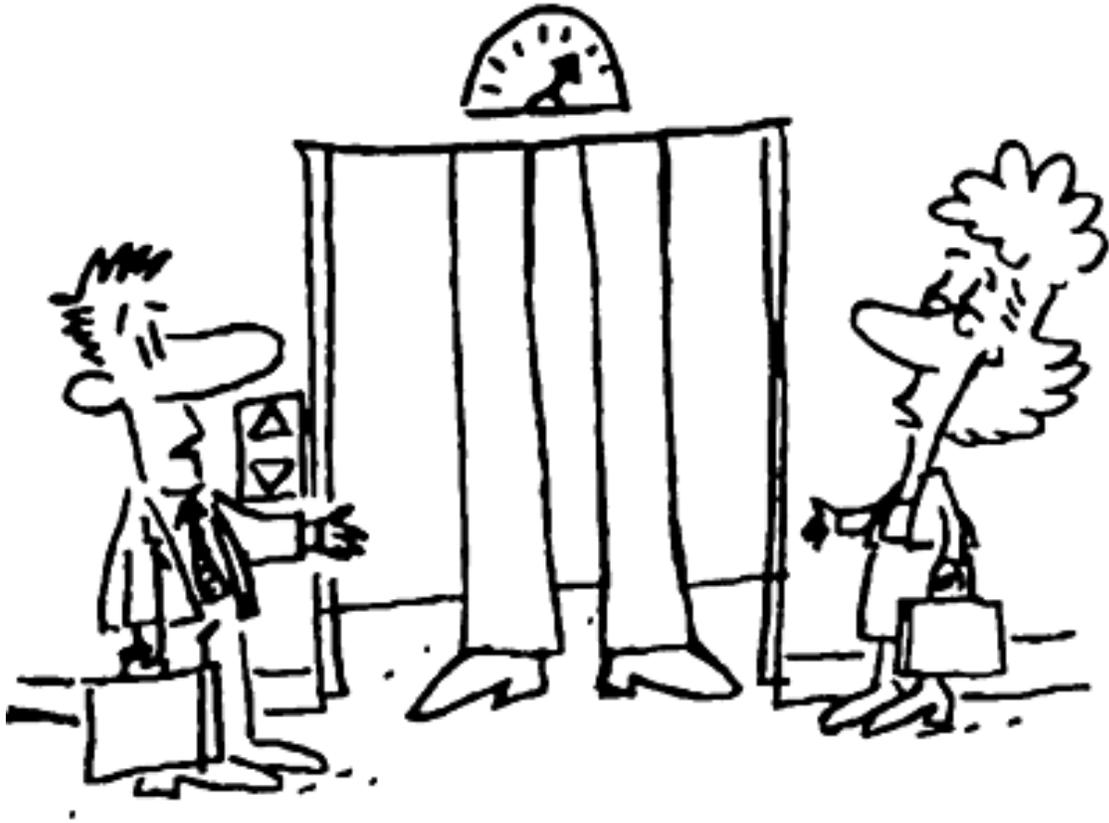
1999 Fall, Art by Jeff Dionise



Legs, leg up, going up, elevator,
stairs

Write your caption here.

1999 Fall, Art by Jeff Dionise



54) "Jerry Maguire squares off against Gei McGuire to negotiate over the next NBA great." - Brennan MacDowell

55) "Looks like he's got a leg up on us. Let's take the stairs." - Lisette Blumhardt

56) "Ladies first. No, please, go right ahead." - Lela Love

57) "He must have gotten the transformative mediator." - Nicole Popov

58) "How can I trust you? Your lawyer won't even deal with me at arm's length" - Daniel Chen



Clown, Bozo, different approach,
laughing

Write your caption here.

2000 Winter, Art by Jeff Dionise



59) "Clowning around? No, I'm not clowning around. My clients would much rather mediate than litigate this matter." - Lori Perne, Toledo

60) "I hate court-ordered mediators." - Brian Costa, Honolulu

61) "Larry, we all agree that humor's an effective dispute resolution tool, but don't you think this is taking things a little too far?" - Peter Woodin, New York

62) "In determining the attitude of the speaker, research shows that 90 percent of the message is communicated non-verbally." – Mark Cokee

63) "I guess we'd better start figuring out our BATNA right away." - Mai Solmsen, Honolulu, HI (NIM)

64) "Tell Corporate their attorney has arrived for the mediation." - Sherrie Abney, Dallas (NIM)

65) "When they said this mediator is a Bozo, they weren't kidding." - John Egan, Honolulu (NIM)

66) "I distinctly recall requesting a mediator with experience in the Circuit Court., not Circus Court" - Dale C. Hetzler, Atlanta (NIM)

66A) "He thinks he can negotiate a larger contract with Disney." - Ryan Endo (NIM)

67) "I don't think you will have a problem convincing them you need to consult higher authority," - Anonymous (NIM)

67A) "Are you sure this was the only arbitrator you could get?" Jessica Orr (NIM)



Alien, final offer, walk away

Write your caption here.

2000 Spring, Art by Jeff Dionise



68) "Wait! You don't have to be from Mars to like ADR." - Nichole Shimamoto

69) "Settlement Authority? Give us a break. Even E.T. had to 'phone home' before making a major decision." - Lewanda Kathryn VanPelt

70) "But seriously, come with us. Mediators make a good living where we're from." - Jean Sternlight

71) "Wait. Wait. We said mediation, not annihilation." - Ryan Endo

72) "This is my final offer. If you take me to your leader, I'll let you drive." - Tonya Tapper

73) "Ok. Ok. We'll take ALL the lawyers." - Jake McIntyre

74) "Okay. We're sorry. We won't play good alien, bad alien anymore."
- Jessica Orr



Wheel, rock, stone,

Write your caption here.

2000 Summer, Art by Jeff Dionise



75) "I hear what ya say, Fred, about this 'wheel' thingie changing the world, but you said the same thing last year about your 'ADR' idea. - Tony Schutter

76) "If this is the best deal we can offer, it will never fly." - Joan Dillon

77) The origins of the first automobile tort case negotiation. - Brad Wong

78) Early Mediators. "Nice rock. Let's split it up equally and drag it home." - Scott Walchak

79) "I'll give you half the asking price on account of there being a hole in it." - Tonya Tapper

80) "This is all we won in arbitration, but you'd be surprised how upset they were. - Anonymous

2000 Fall, Art by Jeff Dionise



Gorilla, 800 pound gorilla, train,
paper, between us

Write your caption here.



81) "I'm telling you, it's easy money. All you do is listen to two people argue, then you force them to settle. You'd be perfect!" - Daniel Chen

82) "Don't look now, but I think you're going to have to revisit the 'Banana Issue.'" - Vincent P. Fornias

83) "You're probably lucky to get on the train at all. You know - "No shoes, no shirt ..." - Donald Bloss

84) "No sir, I was not negotiating with you for more space." - Ryan Endo

85) "Excuse me sir, but you wouldn't by any chance be an arbitrator, would you?" - Jessica Orr

86) "Put the paper down, Jenkins. Remember, you're the leading wedge of our 'Dumb is smart' strategy for the negotiation." - Anonymous

86A) "I thought it was only posturing when the company said their trial counsel was a 2,000-pound gorilla." - Brad Whitman

2001 Winter, Art by Jeff Dionise



Angels, lawyer, heaven

Write your caption here.

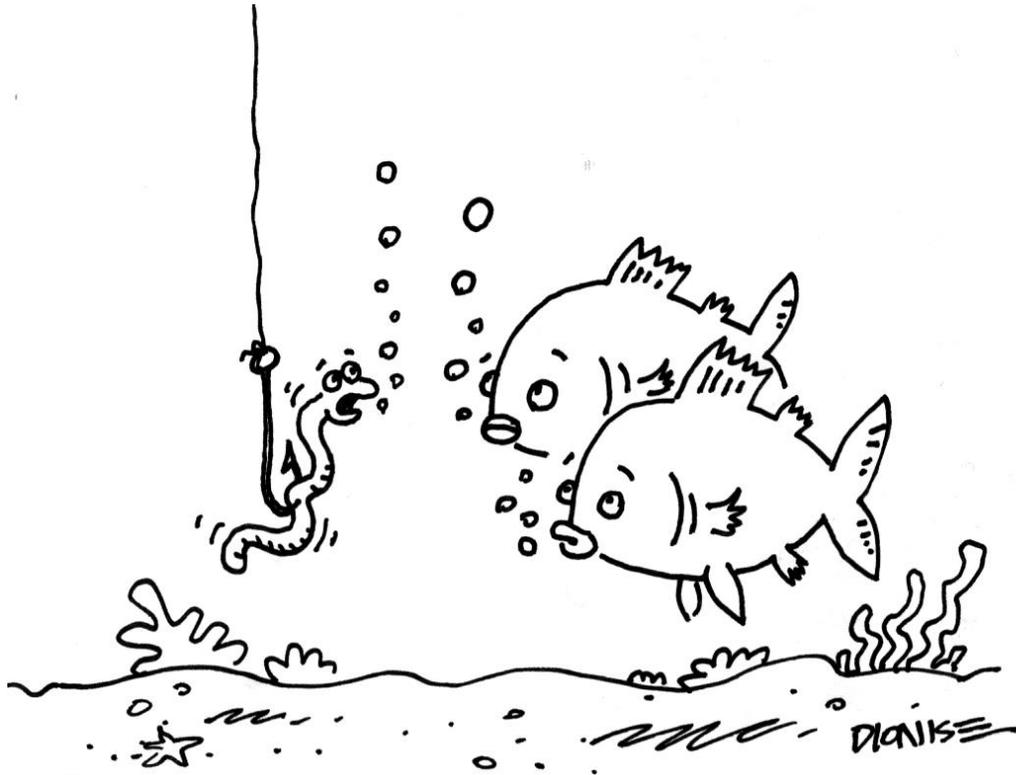
2001 Winter, Art by Jeff Dionise



87) "As a matter of fact I did negotiate my way up here. Why do you ask?"
- Donald Bloss

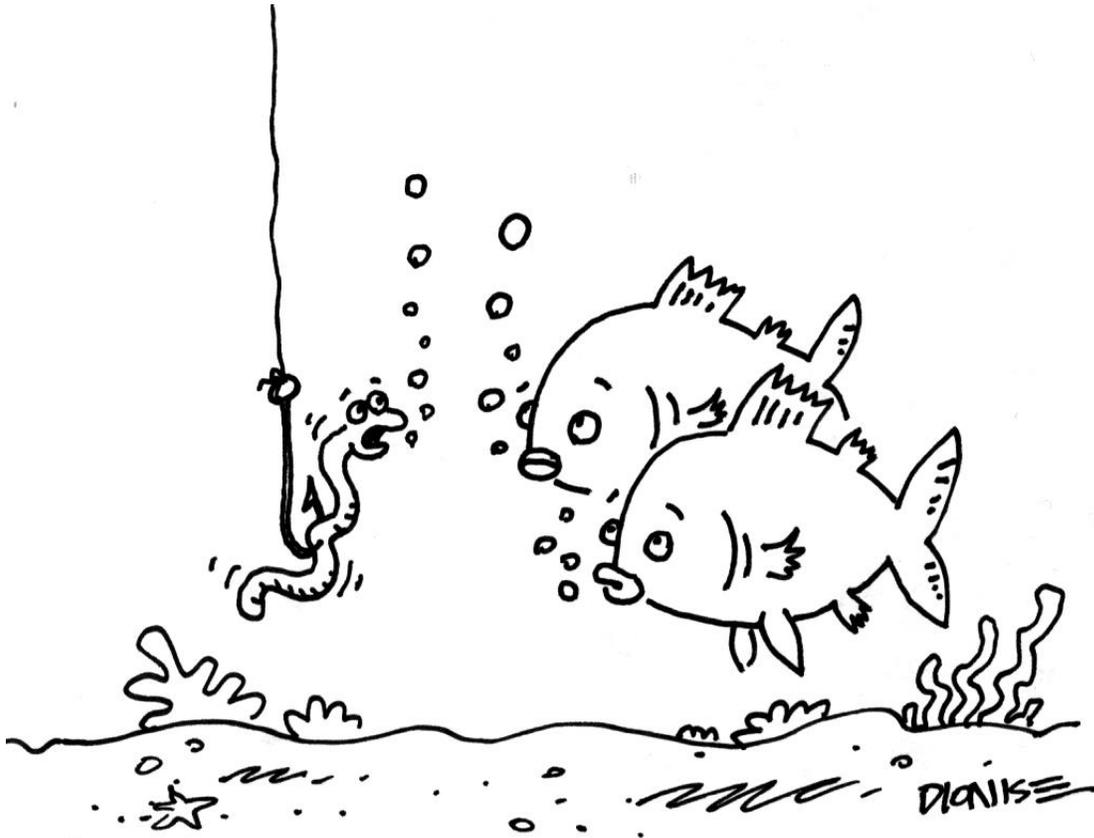
88) "Yes, I was a lawyer and, yes, I'm surprised to be here too." -
Anonymous

89) "That's right. I did use the "Good-guy Bad-guy" negotiation tactic in my
career as a lawyer. Does it show? - Anonymous



Fishing expedition, hooked, sinker,
common interest, win-win

Write your caption here.



90) "Before you get hooked on litigation, you might want to try alternative dispute resolution." - Jack Hanna

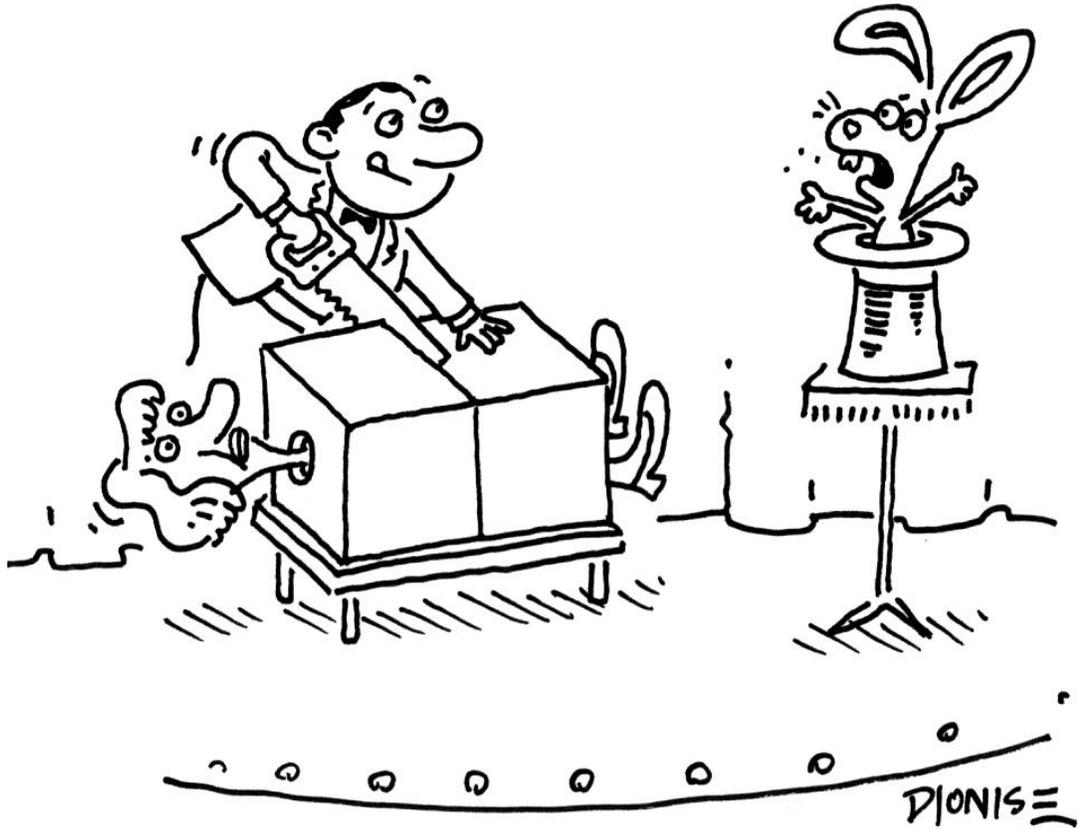
91) "Next time, I'm insisting on written representations. I bought their argument hook, line and sinker. Little did I know that I was to be the sinker." - Jonathan Cohen

92) "I think we can reach a win-win solution here. First thing is for you to help me off this dam hook." - Bob Dauber

93) "Don't you just hate mere distributive situations?" - John E. Bulman

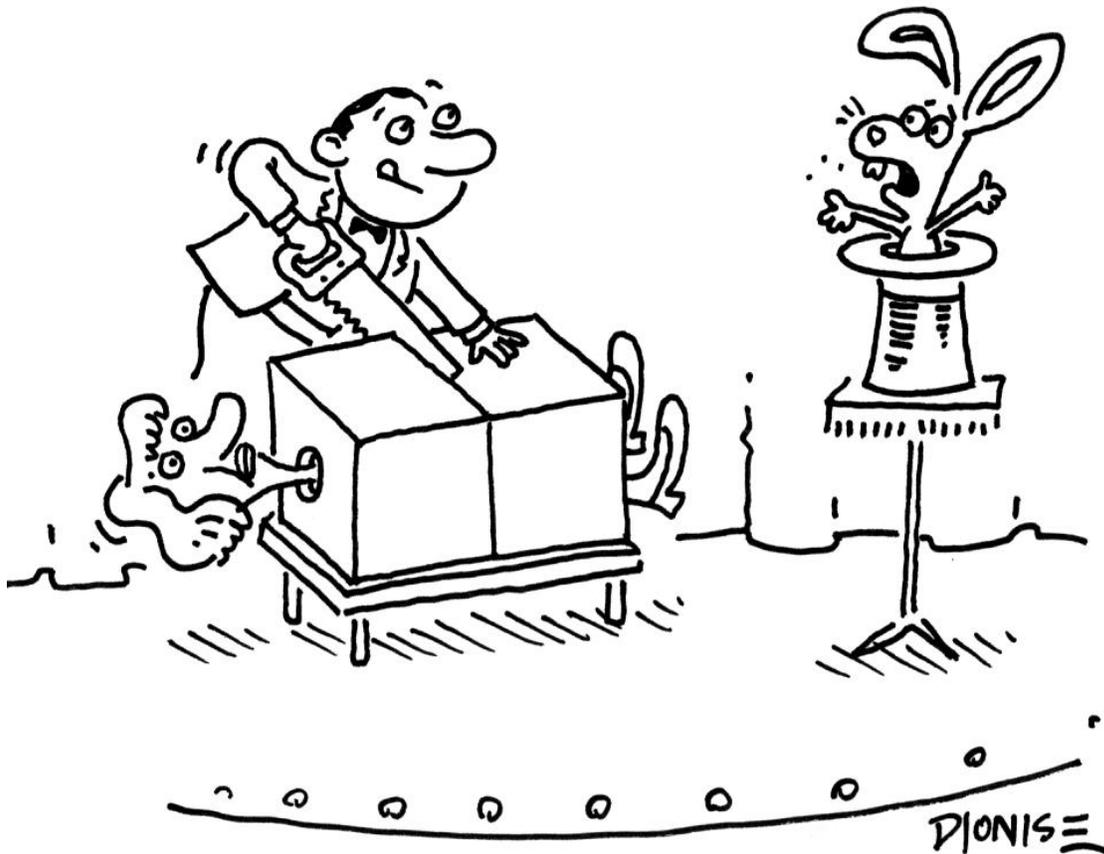
94) "Hey, it may look like our positions are in opposition, but trust me, right now we share very similar interests!" - Michelle Wecksler

94A) "By cutting it into two, we'll be "expanding the worm." – Jennifer Ahn (NIM)



Cut in half, rabbit, trick, me

Write your caption here.



95) "I suppose it's too late to request a mediator?" - Enrique H. Pena

96) "Wait! Wouldn't a facilitative approach be less painful?" - Matthew P. Guasco

97) "That's the trouble with you arbitrators. You are always cutting the babe in half." - Robert Dokson

98) "Wait! Wait! You're supposed to have a baby in there!" - Joseph D. Garrison

99) "Maybe we can put her back together with binding arbitration." – Tommy Otake (NIM)

99A) "Stop! You win! I'll come out of the hat!" – Jennifer Ahn

2001 Fall, Art by Jeff Dionise



Bone, burry, bite, bark, contention

Write your caption here.

2001 Fall, Art by Jeff Dionise



100) "Can we mediate this bone of contention?" - Heidi Guth

101) "Looks like law firms are still teaching new-pups old tricks." - Henry Cox

102) "Every time there appears to be movement towards an agreement, someone throws in a new bone and sabotages the process." - Leighton Hara

103) "Boys, I thought your mother told you no playing litigator in the backyard. Somebody is going to get hurt!" - Michelle Weckler

104) "Must be litigators in training." - Bartlett Durand

105) "Isn't it time we bury your differences?" - Jay M. Wolman

106) "I think it's time to call for a private caucus." – Jack Hanna

107) "Is that the UMA (Uniform Mediation Act)?" - Anonymous

108) "Why can't mediators practice what they preach?" - Anonymous



Flowers, matching, late, date, night

Write your caption here.

2002 Winter, Art by Jeff Dionise



109) "Sorry, but your offer is too little, too late." - Gene Brockiand

110) "How about we expand the pie and all go out together?" - Erin Lur

111) "BATNA time!" - Terrence Lee

112) "Uh, Honey, I told him to mediate, not meet for a date." - Ian Hawati

113) "I've heard of 'mirroring' but this is ridiculous." - Leighton Hara

114) "I could have sworn that the mediator said I have Saturday nights and you have Friday nights." - George Burke

115) As he stood there, Peter ran through his list of gambits to break the ice. - Chastity Imamura



Interests, goal, compromise,
downriver, paddle

Write your caption here.

2002 Spring, Art by Jeff Dionise



116) "Now that's what I call a WATNA!" [Worst alternative to a negotiated agreement. - Jean R. Sternlight

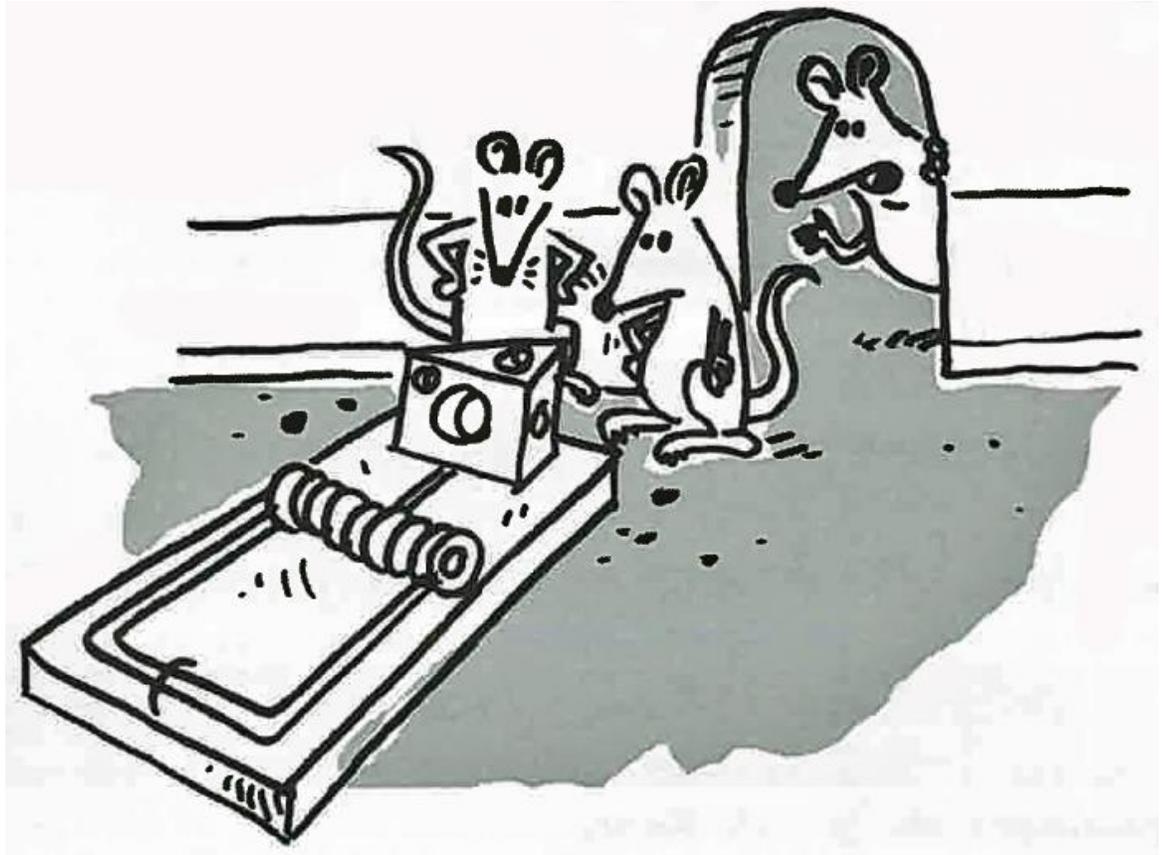
117) "Mum! Whatever happens, remember that it was great you and Dad could work it out without going to court." - Jacky Campbell

118) "The mediator said to have faith in the process." - Stefanie Menack

119) "Just want you to know that I've finally figured out your interests." - Joan Tobin

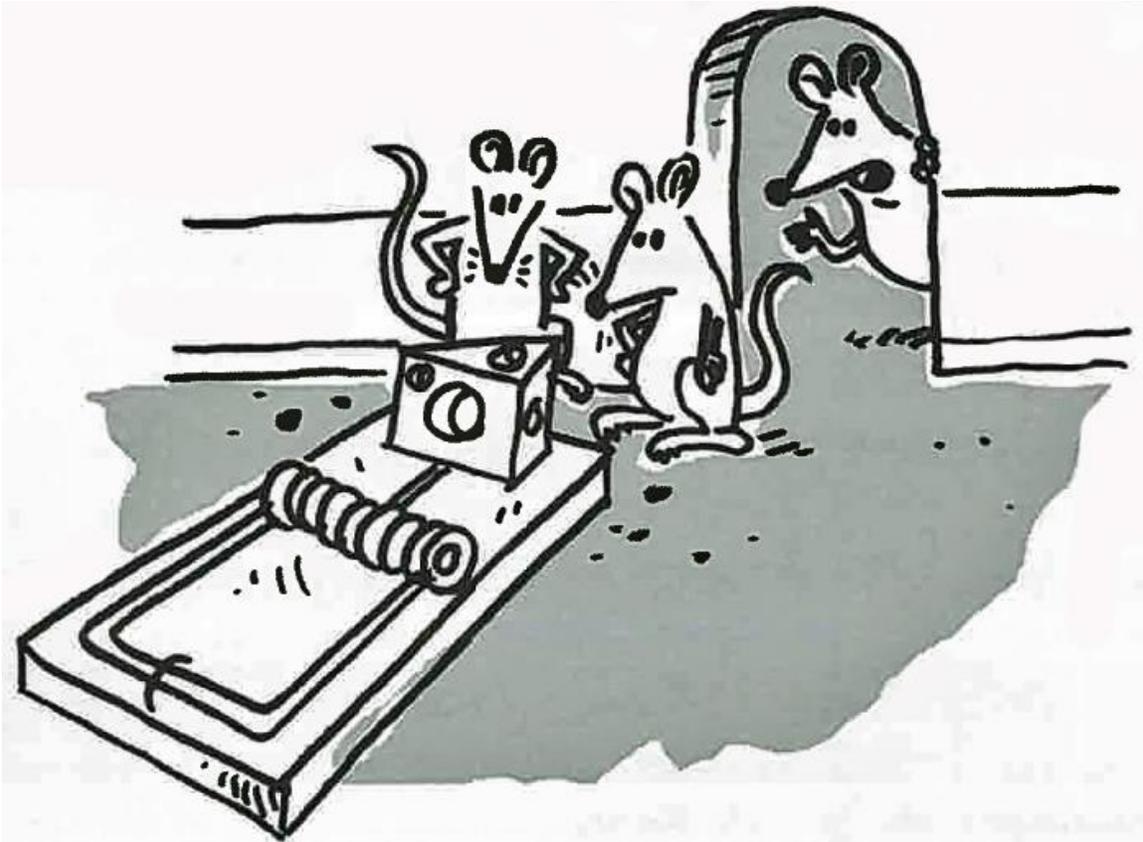
120) "At last, you two are motivated to work together toward a common goal!" - Mark R. Joelson

121) "Please, nothing is everything and something is better than nothing"
- Luis Miguel Diaz



Cheese, trap, inside, outside,
mouse, rat

Write your caption here.



122) This is a win-win situation! I am behind you 100%. - Monique Wedderburn

123) "Why don't you two ask the mediator to take the first bite?" - Richard B. Chess

124) "Perhaps we should look at this from a systems perspective!" - Margaret Shaw

125) "So much for: 'Getting to Yes' and 'Getting Past No' ... what we need now is 'Getting the Cheese.'" - Christina M. Storm



Offer, rattle, milk, trade, cat

Write your caption here.

2002 Fall, Art by Jeff Dionise



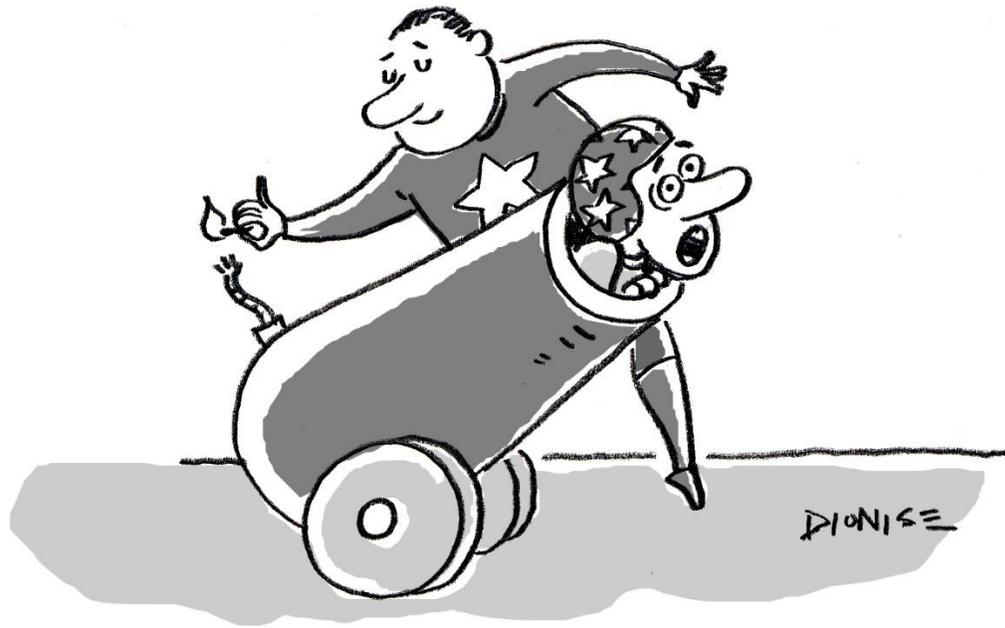
126) "OK, let's look at slide 6. Observe how apparent problem-solving assets - here opposable thumbs and the ability to climb - are ineffective when not consolidated in one actor or potential offeree." - John R. Van Winkle

127) "OK. Two bottles of milk. That's my final offer." - Jay Wolman

128) "Honestly, I was only joking when I suggested using the neighbor's dog as an unbiased mediator." - Okechukwu Amadi

129) Cat: "When you cry 'mommy'- that's just your position. Can you tell me more about your underlying interests?" - Anonymous

2003 Winter, Art by Jeff Dionise



Final, fire, bang, ignite, light, aim

Write your caption here.

2003 Winter, Art by Jeff Dionise



130) "So I'm assuming there's no chance of settlement?" - Milika'a Ordenstein

131) "This has got to be an exception to mediator immunity." - Wendy Yamamoto

132) "Is it too late to go with my BATNA?" - Jon Alexander

133) "Explain to me again how this is a 'win-win' situation." - Kaliko Warrington

134) "Do you still think my offer is too low?" - Okechukwu Amadi

135) "That's our final offer, and this time my client is really leaving" - Charles Abbott

136) "I told you they'd consider that counter-offer explosive." - Susan Grody Ruben

137) "I thought my alternative was getting fired, but I didn't think you'd take it literally." - Michele Muraoka

138) "Suddenly Bob realized that he should have also negotiated for a net." - Christopher Chun

2003 Spring, Art by Jeff Dionise



Compromise, middle, high-low, up,
down

Write your caption here.

2003 Spring, Art by Jeff Dionise



139) "Why don't we agree on a middle ground and take the stairs?" -
Judith L. Haworth

140) "Let's compromise....we'll go sideways." - - David Lieberman

141) "Any chance for a 'High-Low Agreement'?" - - Charles Abbott

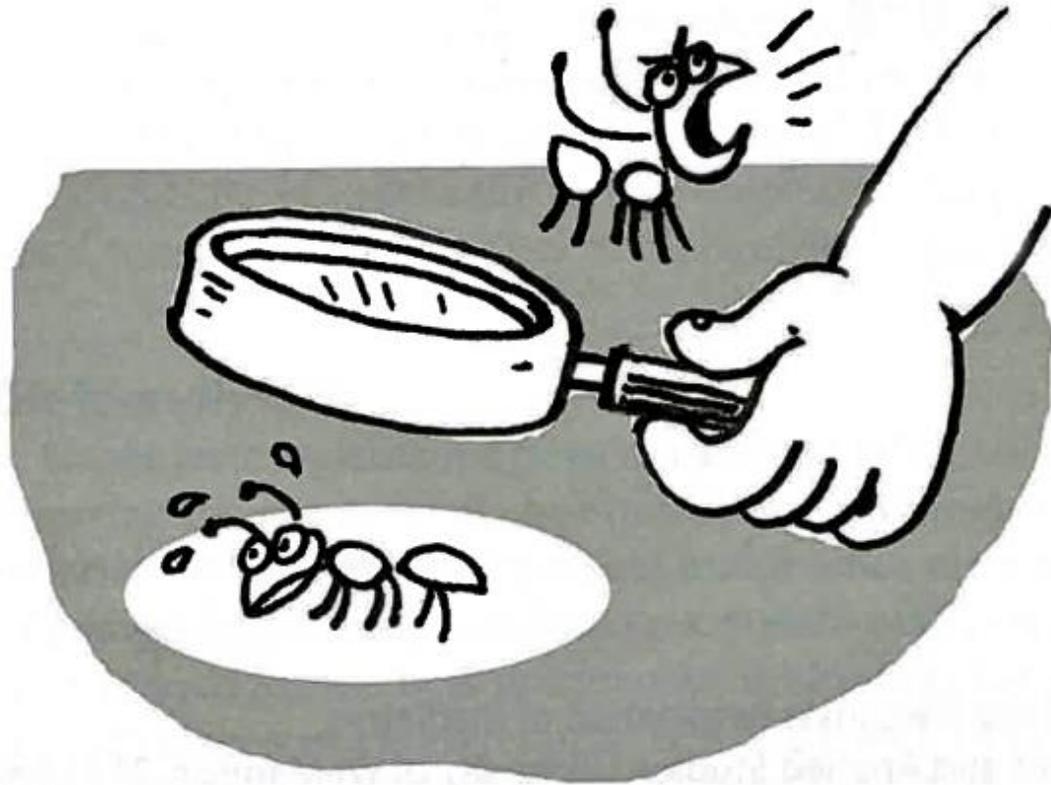
142) "It looks like this is an appropriate time for a high-low proposal." -
Robert N. Dokson



Close look, magnifying glass, ant,
scrutiny

Write your caption here.

2003 Fall, Art by Jeff Dionise

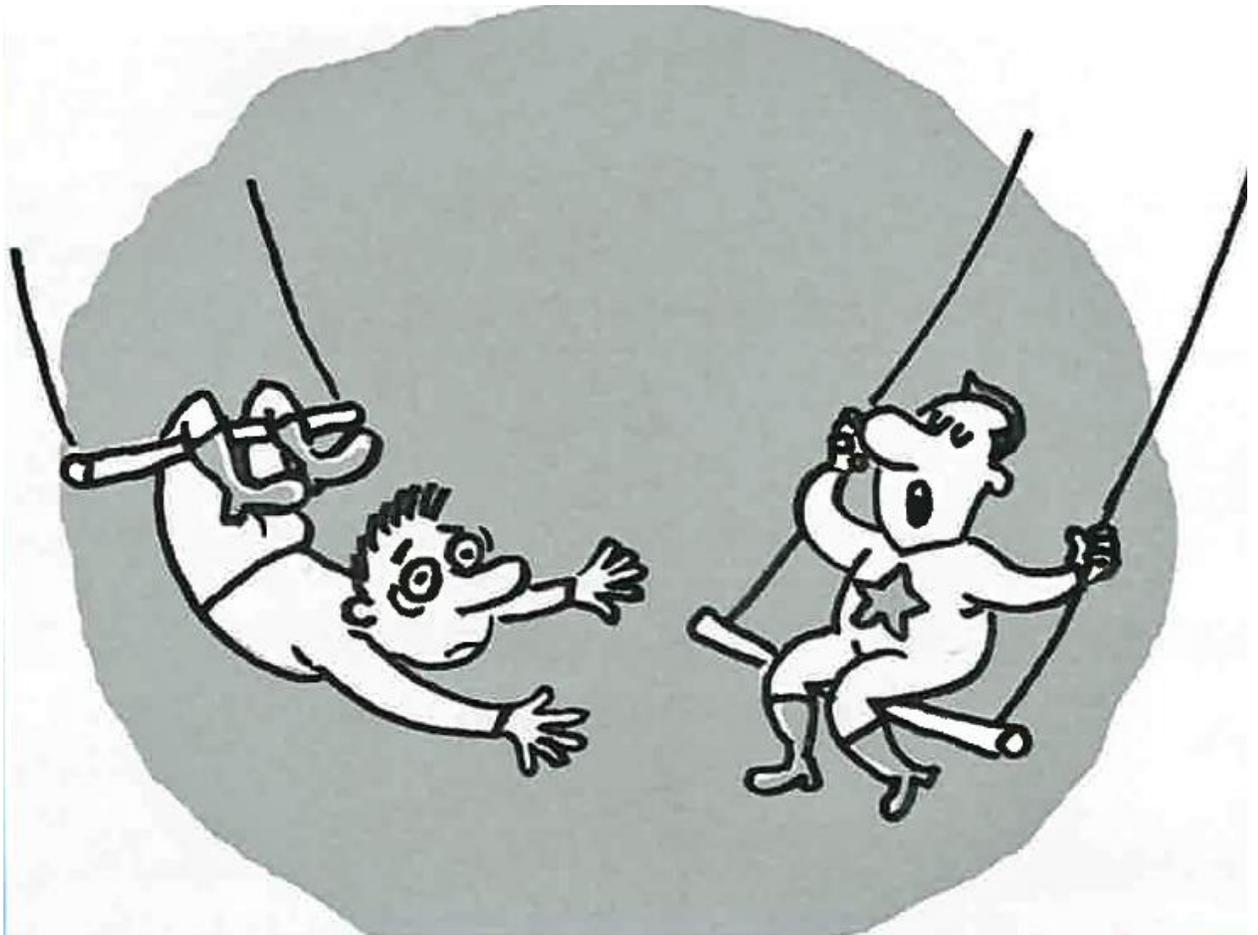


143) "I knew you were not a neutral mediator! Here you are incinerating my opponent yet you never offered that to me." - John M. Stewart

144) "There's no strict scrutiny standard in ADR!" - Lynne Cruise Greene

145) "Please write that down and you'll have your turn in a minute." - Roger C. Wolf

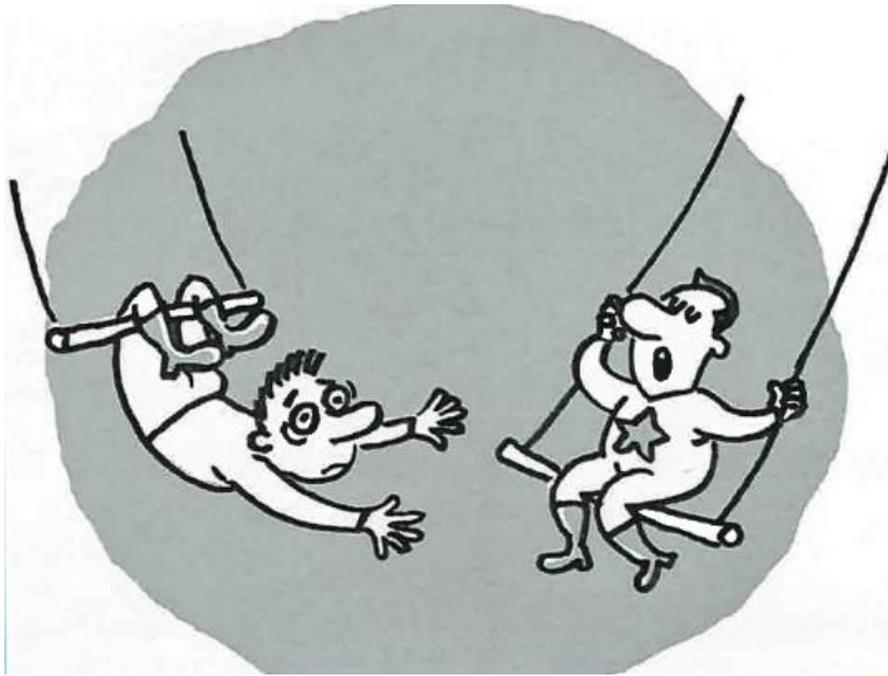
146) "I object. The discovery rules don't say anything about magnifying glasses!" - Mark Joelson



Halfway, flying, catch, trapeze, net

Write your caption here.

2004 Winter, Art by Jeff Dionise



147) "That Code of Civil Procedure says that in mandatory mediation I've met my obligation by simply appearing." - Lee Jay Berman

148) "Under the circumstances, what do you really think is your BATNA?"
- Robert N. Dokson

149) "I decided ultimately that I didn't want to meet you halfway." – George H. Friedman

150) "There is no way I will meet you halfway!" – Ruth V. Glick

151) "The surprised disputant was forced to hang on while the claimant told his tale. And the gap only got larger." – Michael W. Hayslip

152) "Keep hanging in there. They don't call me Super Mediator for nothing." - Ed Shapiro

153) "So as a result of the settlement, I got the costume trunks and she got a safety net." – John R. Van Winkle

154) "Please write that down and you'll have your turn in a minute." - Roger Wolf

2004 Spring, Art by Jeff Dionise



Rain, share, umbrella, wait, me

Write your caption here.

2004 Spring, Art by Jeff Dionise



155) It rains - and suddenly you take his side! - Chris Ewan

156) Sure, now you decide to agree. - Anita Rufus

157) With a BATNA of only wetness and more wetness, Larry knew he had nothing to lose by asking. - Paul Lawson

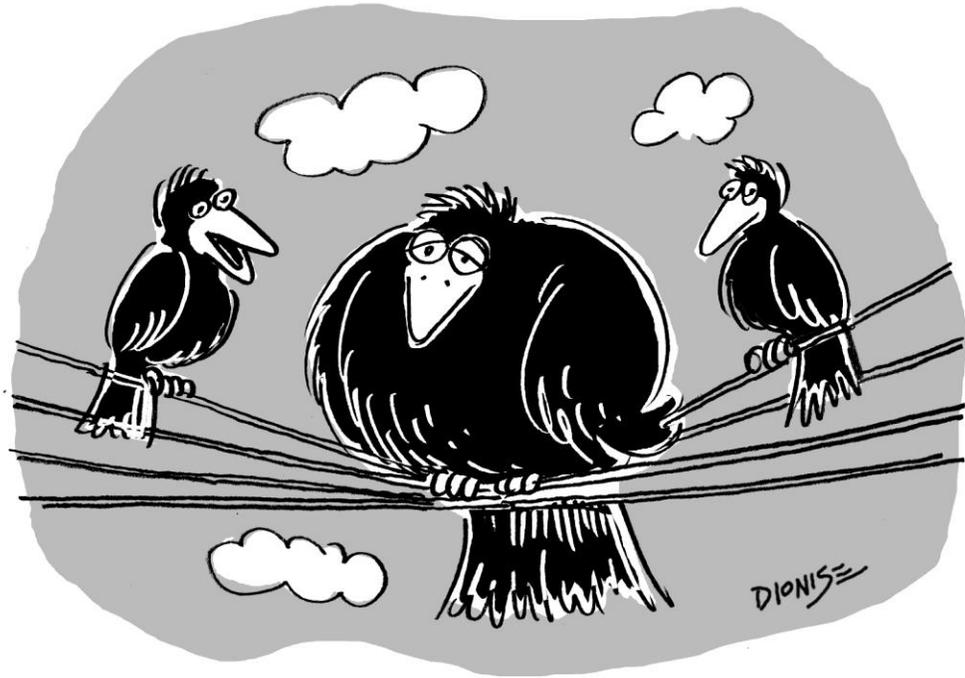
158) Do we negate the confidentiality agreement if we share our umbrella with him? - Brian Gonsalves

159) Wouldn't you give a \$10 umbrella to keep your rainmaker happy? – Richard Beem

160) We're sorry you view this as an opportunity to transform relationships.
But this is a zero sum umbrella. - Michael Green

161) This is a hell of a time to prolong the caucus. – Miriam Null

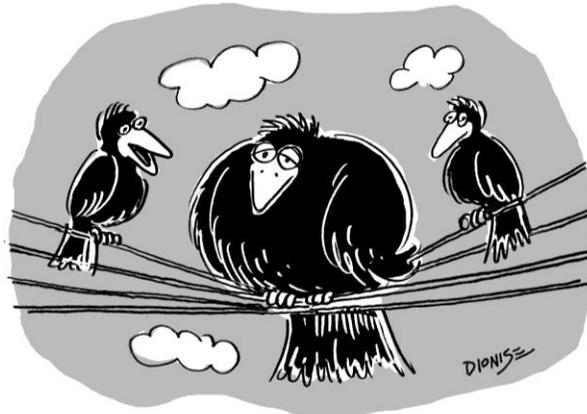
2004 Summer, Art by Jeff Dionise



Birds, for the birds, online, lines,
weight

Write your caption here.

2004 Summer, Art by Jeff Dionise



162) As a mediator, you're supposed to improve the lines of communication, not weigh them down. - Jinhee Kim

163) OK, this is a process known as "Online" mediation. - Grayson Peeler

164) Bottom line just won't bend, huh? - Brian Gonsalves (NIM)

165) We'd prefer it if you sat on the fence. - Marilyn M. Levine

166) This "online" mediation is for the birds. - Lisa La Grange

167) When you sued McDonald's, what did you settle for? - Anonymous (NIM)

168) How can we negotiate a deal when you won't budge from your bottom line? - Aimee Moo

169) You want to "expand the pie?" It looks like you ate the pie. - Sara Jones (NIM)

170) After 120 mediation sessions, 240 donuts, and 480 cappuccinos, I still can't get them to move past the facts! - Jana Fong

171) I can't believe that it was only a year ago that she took that negotiation class! Now, she is getting all the worms! - Jean-Claude Mademba-Sy

172) Mediation is for the birds. - Jessica Bogen (NIM)

173) Online dispute resolution - quicker, cheaper, and easier for whom? - Holly McPherson (NIM)

174) Communication to prevent conflict: No honey, I don't think you are gaining weight. - Anonymous



Heaven, angels, God, lawyer, gate,
list, your name

Write your caption here.



175) "Sorry, but your admission here is one dispute that's not subject to mediation." - George Friedman

176) "You say you're a mediator, not a litigator - that will make a difference." - Sherman D. Fogel

177) I understand you and opposing counsel could not agree on a mediator, but are you sure I'm on the Court's approved list? - Stuart Widman

178) "Satan gets a default judgment, because you have no lawyers in your jurisdiction." - Charles B. Craver

179) "It says here you are a litigator. I'm afraid up here everyone mediates." - Lynne Cruise Greene

180) "Sorry, but ADR is only available BEFORE final judgment is rendered." - Gary D. D. Morrison

181) "I assure you that He is a completely fair and unbiased neutral." - Todd M. Allison



Hunting, two against one, loaded for bear, undisclosed, talk, meat

Write your caption here.

2005 Winter, Art by Jeff Dionise



182) "It may be too late for active listening." - David Chandler

183) Willy and Wally discuss the pareto principle and super optimal solutions.
- Peter Adler

184) "Bear in mind, at this point we can stop debating whether he is an INTJ or an ENTJ. It really doesn't matter, as long as we are not DOA." - Elizabeth Kent

185) "Let's don't jump to conclusions. Yes, it's an American with a gun, but maybe he's just here to spread democracy and freedom." - Kem Lowry (NIM)

186) "Let's try good cop bad cop. You go out roaring and snarling, and I'll be along in a while". - Robert Robinson

187) "But I don't like your proposal of me going out to meet him halfway" - Cliff Hendler

188) "Do you think he would agree to have Yogi mediate?" - Edgar Roy

189) "Is it me, or is this arbitrator loaded for bear?" - George Friedman

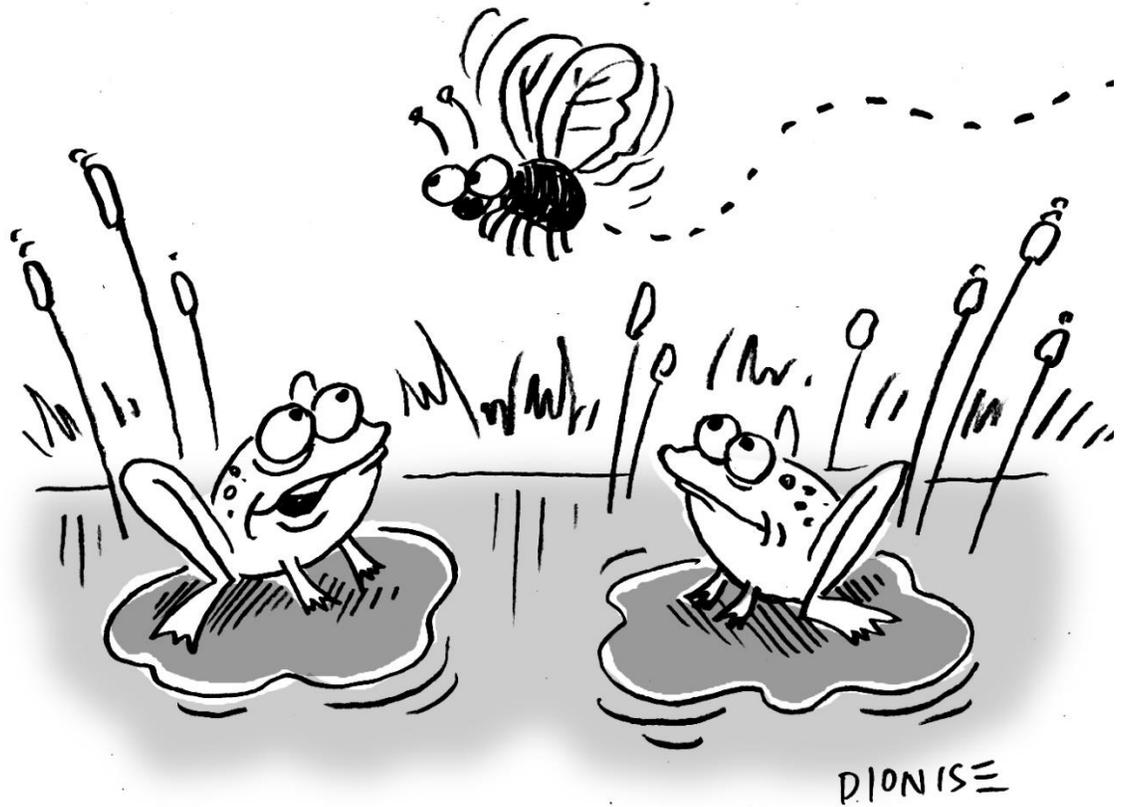
190) "You said be stubborn. You said don't split the difference. If we had handed over Bambi, we wouldn't be in this mess." - Peter Whitfield (NIM)

191) "What's that transformational thing everyone's been talking about?" - Hadrian Hatfield (NIM)

192) "Now do you understand the mediator's point about WATNA?" - Stuart Widman (NIM)

193) "He says "Come out," cause he just wants to talk, but I don't believe him." - Mary Culbert (NIM)

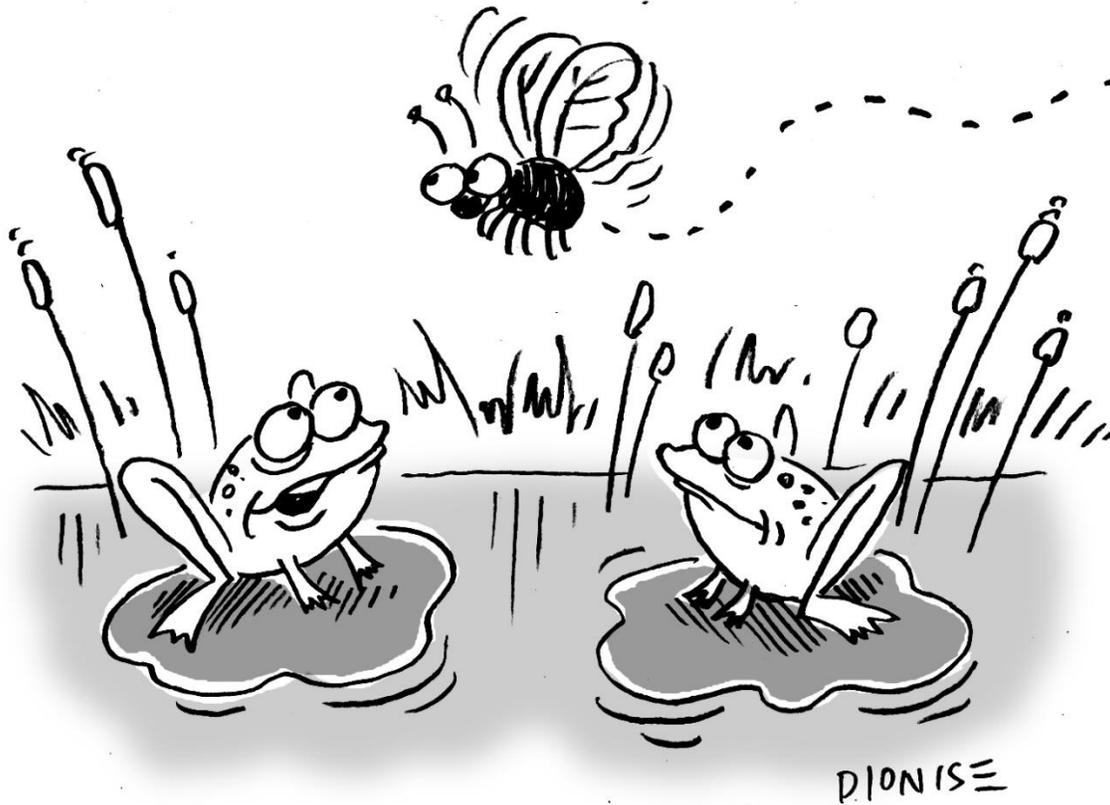
194) "I asked for a 'mediator' but they sent a 'meat eater.'" - James Rubenstein (NIM)



Fly, frogs, buzz, pad, land

Write your caption here.

2005 Spring, Art by Jeff Dionise



195) "For the last time, we don't need a mediator, so buzz off" - George Friedman

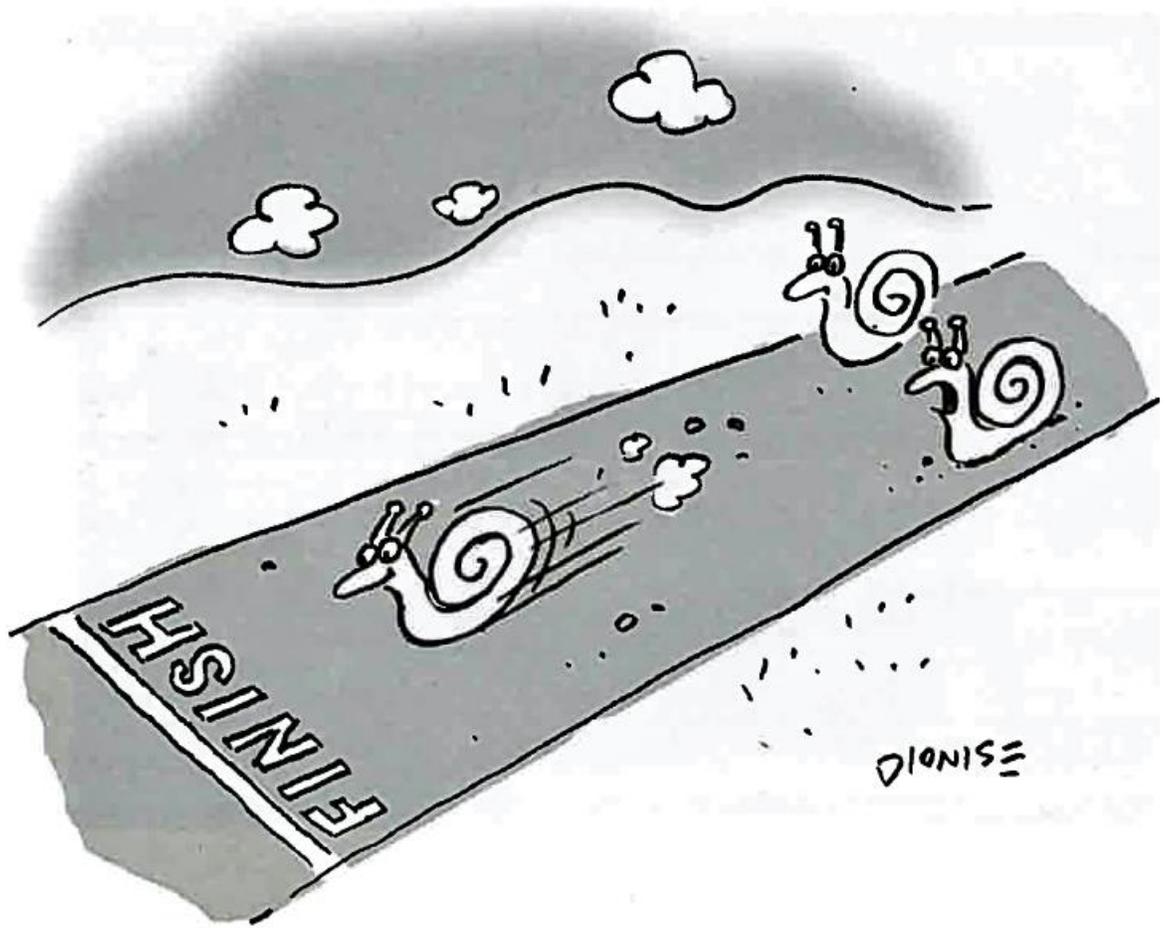
196) "I expected these caucus rooms to offer more confidentiality." - Paula Young

197) "How the heck are we supposed to expand the fly?" - Sophorn Lay

198) "You know, Frank, ever since we took that ADR course, I just can't help thinking about the fly's potential interests and needs." - Mike Weddington

199) "Call it shuttle diplomacy...my pad or yours!" - Jack Bolling

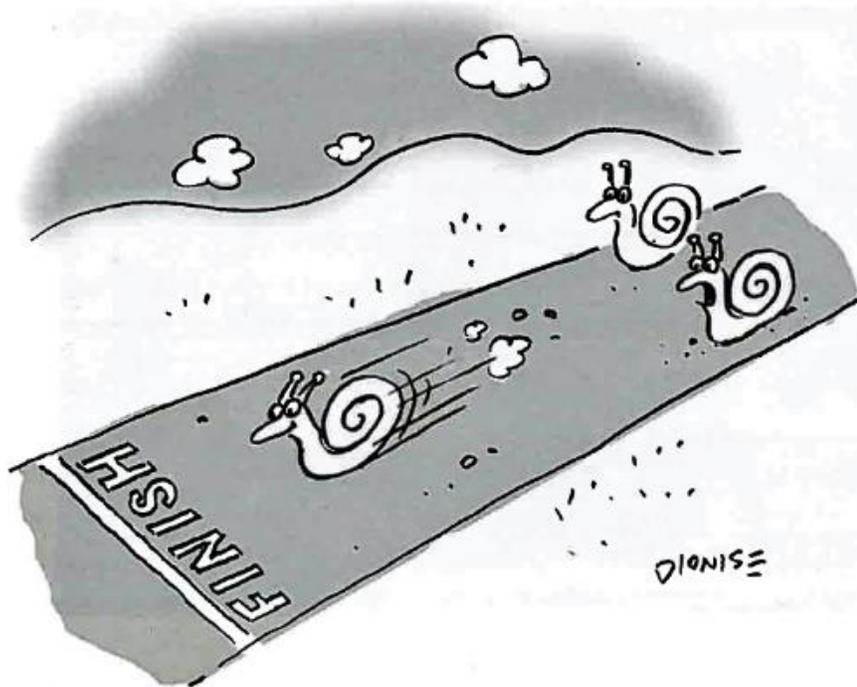
200) "Mediator McFly suddenly understood the value of Mediation Ground Rule # 1 : Don't eat the mediator." - Tina Lanning



Snail, snail's pace, finish, race, catch up

Write your caption here.

2005 Summer, Art by Jeff Dionise



201) Ever since he took that ADR course, Tom is pulling ahead of all the rest of us on the litigation track. - Anonymous

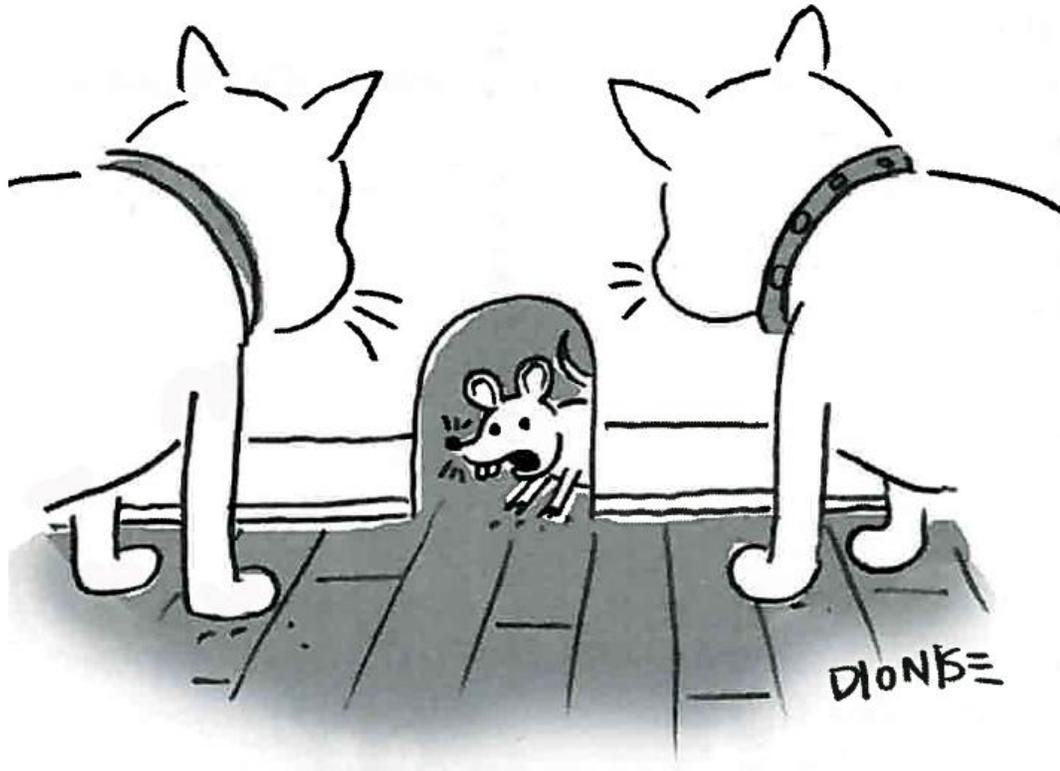
202) "Despite his rush to the courthouse, 'The first shall be last' - especially in terms of costs, fees, and lost opportunities." - Marc Bouret

203) Incorporation of ADR in the business culture is sure proceeding at a fast pace. - Elizabeth Kent

204) "Her entry form came by snail-mail, but she's faster than a retired litigator trying to hustle up a mediation practice." - Anonymous

205) Heard at the Mid-East Mediator's Fun Run: "Wow! He's really moving fast! I bet he'll be to the finish line before the end of the century." - Anonymous

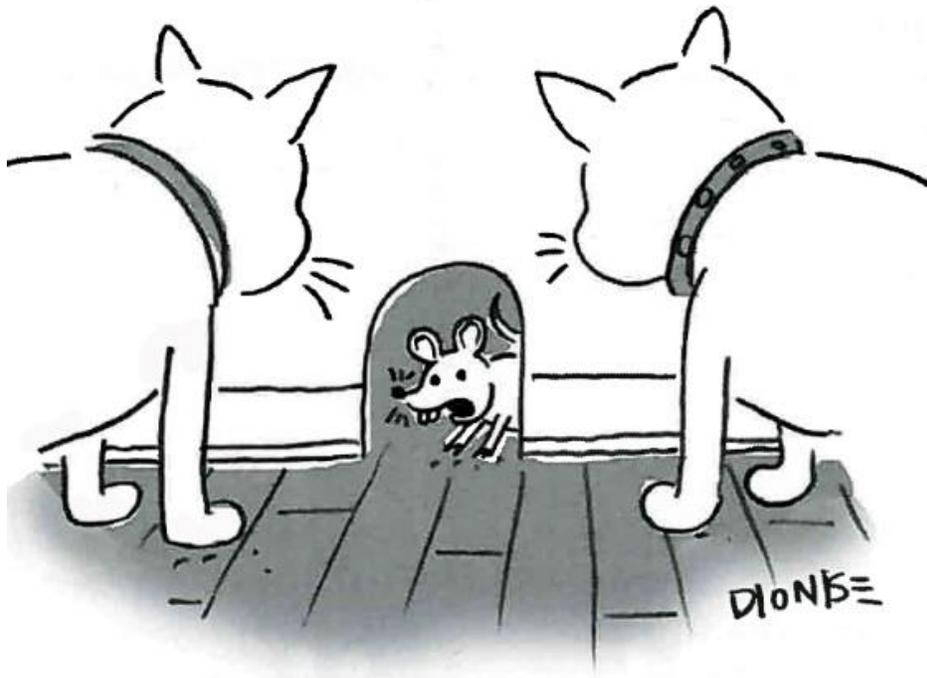
206) The race to the courthouse has really changed since ADR has come on the scene. - Anonymous



Cats, cheese, coming out, talk

Write your caption here.

2005 Fall, Art by Jeff Dionise



207) "Counsel, before I come out, the first item of business is to agree on ground rules." - Richard Barron"

208) "Yes I do use a Catlaborative approach to mediation. Do you think that would help?" - Mary Kate

209) "Once again Mediator Mouse solves another dispute between Fat-Cats." - Russell B. Pate

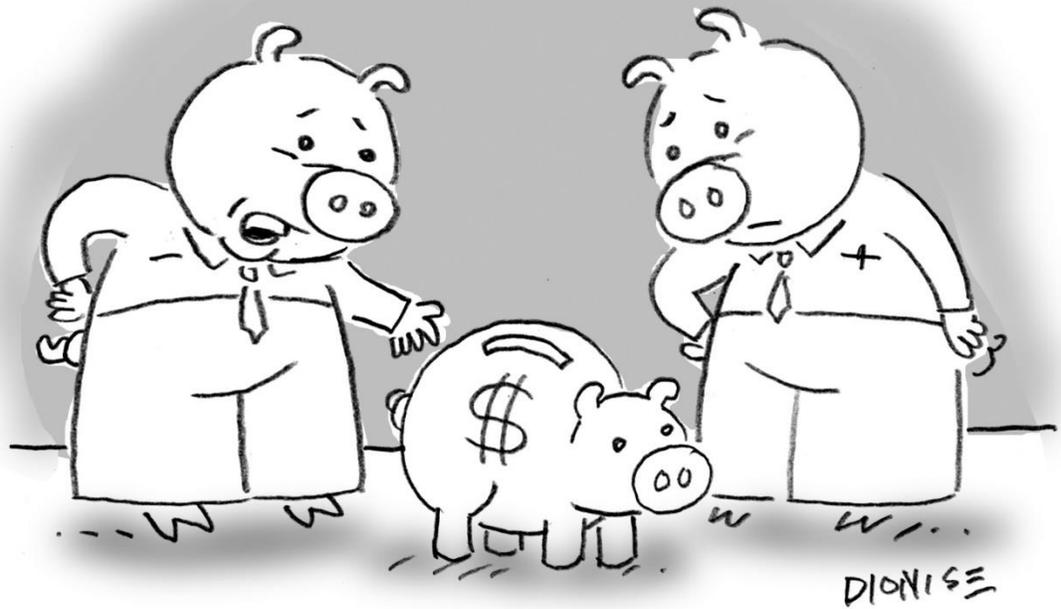
210) "You two must be here to mediate the Katz divorce."- Richard Barron"

211) Wait! Let's talk first. Have you considered mediation? There must be a win/win solution to this!" - C. Stuart Mauney

212) "Who moved my cheese?" - Yugo Nakai

213) "My lawyer is a real pit bull." – Charles Craver

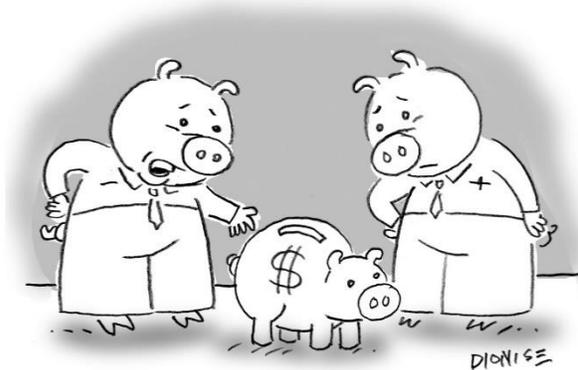
213A) "How come they didn't teach about CATNA in the course I took on problem solving" – Douglas Frenkel (NIM)



Pig, bank, save

Write your caption here.

2006 Winter, Art by Jeff Dionise



214) "Bob, I am sure this mediator's references checked out, but I have a suspicion he'll be laughing all the way to the bank." - Patrick Baker

215) Pig 1: "What happened to Sandy?"

Pig 2: "He unsuccessfully tried to mediate between two wizards!"

- Murat Bersekov

216) "Junior is looking fatter and more prosperous every day since he's been out roaming the Pareto frontier." - Russel Murray (NIM)

217) "We've tried huffing. We've tried puffing. We've even tried mediation. I think we may be running out of creative solutions. Hand me the hammer. " - John Kubis

) "It might be hard to get past distributive bargaining on this one." - Norton 218Roberts

219) "What a reversal! That high-priced arbitrator said I'll have to split "this baby" to pay his fee." - Anonymous (NIM)

220) "I thought you said this case was a cash cow! Now the mediator says it's only worth the kid's piggy bank." - Richard Lieberman (NIM)

221) "I say we try ADR first. That Solomon guy is a little crazy." - Darin Oda

222) "Well, at least we have SOME common ground to start from...." - Grant Arnold (NIM)

223) "We should have mediated rather than litigated. Now the little piggy has no money to go to the market." - Tracy Cole

224) "There but for the grace of God..." - Christian Fenton (NIM)



Sand, up to neck, beach, ground

Write your caption here.



225) "When I told her this conflict would be over when one of us 'was in the ground,' I didn't mean it literally!" - Suzanne Landers

226) "If hindsight is "20-20", who turned him around? I thought we had our head in the sand. - Robert Federman

227) "Gerald agrees to participate in good faith in the mediation of Junior's child support payments - just as the tide rolls in for the second time." - Weldon Schieffer

228) "I guess this one can't walk the talk." - Mary Culbert

229) "If you two want me to help you reach a resolution, you're going to have to look at the big picture. After listening to each of you, I'm up to my neck in the nitty gritty!" - Melanie Fahey

230) "When I agreed to mediate my last malpractice case, I thought it might cost me an arm and a leg... but this is ridiculous!" - Matthew Radin



Monkeys, island, wait

Write your caption here.

2006 Summer, Art by Jeff Dionise



231) "Do you think they would consider meeting us half-way?" - Brian Tierney

232) "I've started a great new business - Message in a bottle Dispute Resolution." - Jason Kaneyuki [JB] MBDR? Variation of ODR?]

233) "In the future, when bidding for our vacation rental online, if the seller promises, "Guaranteed isolation and oceanfront views in paradise," you might want to clarify some terms." - Robert Sherman

234) "When I said I wanted to negotiate on neutral ground I didn't mean this neutral." - Jamie Sheu

235) "How long can we keep going without a neutral?" - David M. Sobel

236) "Don't you think this is a bit extreme for breaking an impasse in a two-arbitrator panel?" - George Friedman

237) "... and then, in jest, I said, "Judge, the only way this case is going to settle will be to put us on a desert island until we come overcome our differences." - Jay G. Taylor

238) "If you reject my offer, I'll go ape." - Charles Craver

239) "See what happens when you give up control over the outcome?" - Ed Shapiro



Swim, duck, match, float, play, deep
end

Write your caption here.

2006 Fall, Art by Jeff Dionise



240) "As a lawyer Frank was always a shark, but as a mediator he is just learning how to swim." – Nicole Malinko

241) "The mediator will never believe we're incompatible if we go to the session wearing matching outfits! - Ken Andrichik

242) "How could you pick that duck when you knew I was going to wear this dress?" - Carl E. Ver Beek

243) Do you think your mediation skills will keep you afloat? - Timothy W. Stewart

244) "Either your BATNA is flying south for the winter or you have some explaining to do." - Will Kiser

245) "No, Bob, the fact that we're wearing the same pattern does not dovetail our divergent interests." - John Thompson

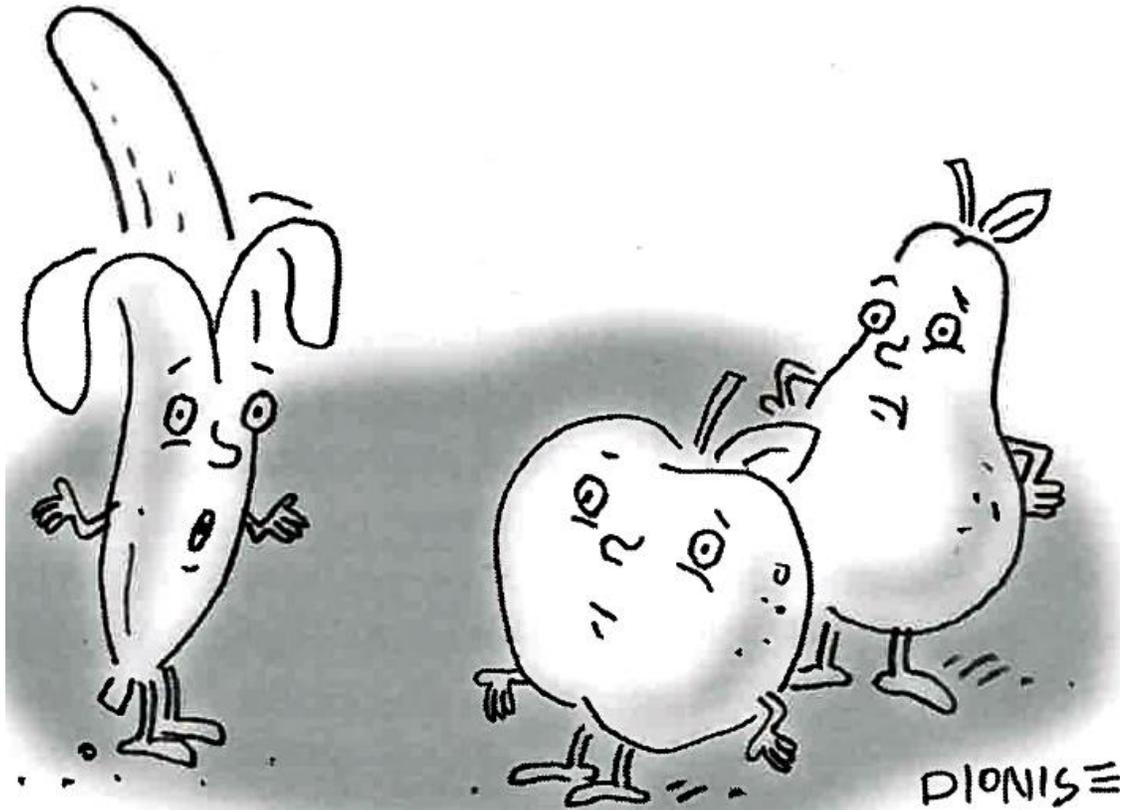
246) "When I asked you to "fashion" a settlement offer similar to mine and "float" it by me, I think you took me too literally!" - Richard Lieberman

247) "If this is your idea of "Dress for success in ADR," you need to spend more time in the shallow end of the pool." - Anonymous

248) "So my Mr. Mediator, if you think that's going to break our impasse, think again." - Anonymous

249) "I think you'd better go get that master's degree in conflict resolution because your natural style leaves a lot to be desired." – Anonymous [JB: can list schools that offer this degree]

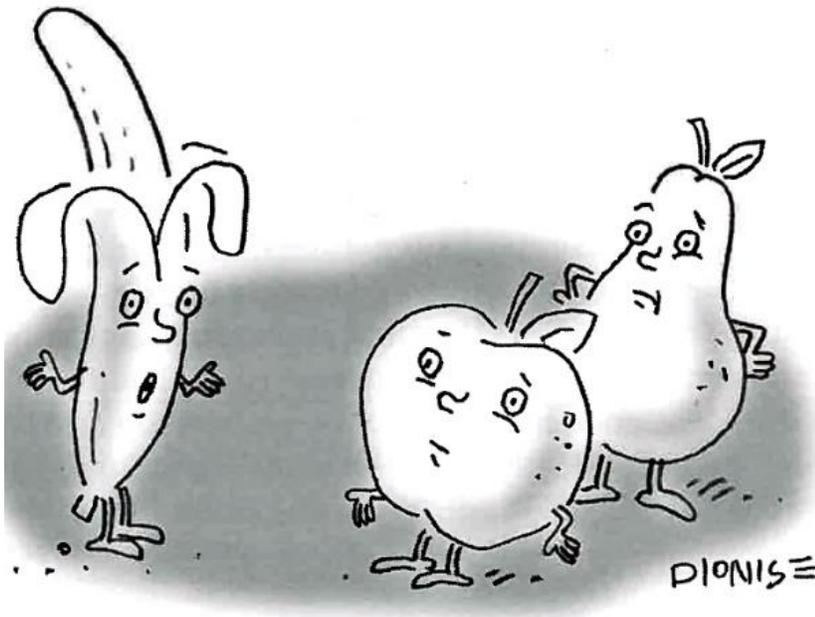
250) "Do you still think mediating divorce cases is like "ducks on a pond??" – Anonymous



Fruit, peel, appeal, pear, apple,
banana

Write your caption here.

2007 Winter, Art by Jeff Dionise



251) “Take it from me, you two should definitely get out of there and take your chances with your BATNA if the mediator says that you look ripe to resolve the matter.” - Brian Wherley

252) “Guys. The negotiation is failing. Management says they’re going to can us.” - Jacob Herlitz

253) “I told you early full disclosure would work! They said we should come back to the table just before lunch.” - Richard Lutringer

254) “This dispute may not be ripe for mediation, but I am.” - Jason Sorel

255) “We aren’t going to get anywhere if you don’t try to understand his pear-spective.” - Robert Dossett

256) “I know! I know! You guys told me mediation was an “a peeling” process.” - Anthony Thompson

257) “I’m telling you guys to mediate your dispute. Otherwise, you could end up like me. You could win the trial and lose on a peel.” - Daniel Jankowski

258) “Sorry guys. Litigation was giving me a splitting headache! ADR is more a-peeling.” - Amy Lawrence

2007 Spring, Art by Jeff Dionise



End, termination, time pressure,
world ending, monk, protester

Write your caption here.

2007 Spring, Art by Jeff Dionise



259) "Time pressure can be helpful in mediation - let's borrow his sign." Carol Albert

260) "I hope he's right - We're paying our mediator by the hour." Jacob Herlitz

261) "Obviously he has never negotiated with the Japanese before." Craig Shelley and Emmitt Ford [JB: opens up discussions of cultural differences in ADR and humor] (NIM)

262) "I wish the mediator would stop using these signs at the beginning as icebreakers." Yumi Miyata

263) "If only that were true....we'd have so much more leverage in the negotiation." Jay Tanaka

264) "What do you suppose our BATNA is?" - Greg Stolt

265) "Bob, the decision to add ADR to our practice was great. Look at old Charlie. He knew nothing about the "Vanishing Trial." He believed litigation was the attorney's bread and butter." - Anonymous

266) "Call me crazy, but I think he lacks objective criteria for that position." - Anonymous [GTY term]

267) "I wish our meeting facilitator would take a hint from this guy." - Anonymous (NIM)



Water cooler, fish tank

Write your caption here.

2007 Summer, Art by Jeff Dionise



268) "I think we should have negotiated 'higher water quality' over 'best price.'" —Emmitt Ford

269) "Yeah, I guess you could say it was a pretty distributional negotiation. My ex-wife got the fishbowl." - James Wessel

270) "Yes, Doris, you've mastered mirroring—but as you can see, it doesn't always break barriers." - Deborah A. Coleman [JB: NLP and rapport building]

271) "When the salesman offered us the cheapest bottled-water available, we should have clarified the offer a little bit more." - Donovan Kealoha

272) "Look at it positively: we got what we asked for - new fish tank and a water machine." - Shyla Cockett

273) "So let me get this straight—this is our BATNA?" - Jacob Herlitz

274) "I know communication is key to effective mediation, but what do you do if you don't speak 'goldfish'?" - Jay Taylor

275) "I've heard of arbitrators kissing up to repeat-players, but this is ridiculous." - Amy J. Schmitz

276) "The fish psychic says he needs a mediator to get him three more gallons." - E. Barrett Prettyman, Jr.

2007 Fall, Art by Dan Mazanec



Genie, wish, island, lamp, rub

Write your caption here.

2007 Fall, Art by Dan Mazanec



277) "Genie, I know you like to separate the people from the problem, but honestly, a deserted island may be taking it a little far!" – Tiffany Morgan.

278) "What do you mean you want to discuss the "wishes" of the other party?" – John Anderson II

279) "Three wishes? Dream on. I granted three wishes back in the days before I learned negotiation." – Majorie Estep

280) "Is this the transformative approach of mediation?" – Patrick Casstevens

281) "Sorry, buddy, that's not how it works in the real world. If you wanted three wishes, you should have negotiated for them before you let me out of the bottle." - Robert Black

282) "I apologize for rubbing you the wrong way during mediation." – Adriana A. Ramirez

283) "Tell me your position, and I will grant you one wish. Tell me your interests, and I can make all your wishes come true." - Jessica Johnson

284) "Oops. I expected a woman co-mediator based on the name on the roster." - Paula Young

2008 Winter, Art by Dan Mazanec



Pirates, treasure, crab

Write your caption here.

2008 Winter, Art by Dan Mazanec



285) "Captain, last time we litigated over booty, it cost me an arm and a leg and you and eye. I say we agree to arrr-birate this time." - Michael Cortes

286) "If we arr-birate we can use objective crab-teria, bury our differences, turn the tide, and sail away with a settlement." - Stephanie Davis

287) Pirate 1: He's a traitor!

Pirate 2: No, he is an arrr-bi-trator. - Colleen Tomasov

288) "When the parties drew their swords, the crab knew he should not have abandoned his facilitative mediation approach and told them what he really thought." - Kamana Kealoha Kalani Sloat

289) "Because your BATNA and my WATNA seem to involve melted butter and cocktail sauce, would you guys consider mediation?" - Kevin Boughman

290) "Captain, I don't think he's buying it. Swords can't even persuade him to make the first move in the negotiation." - Jade Wong

291) "Ahoy mate! The arbitrator said to split it down the middle." - Elizabeth Kent

292) "This is going to be the second treasure their losing to me while they are too busy fighting over it. When are they going to learn?" - Jennifer Shimada



Cheese, wreck, house

Write your caption here.



293) "OK, maybe it wasn't such a good idea to start with opening statements." - Peter R. Silverman

294) Mickey the mediator soon realized that he too had an interest in the cheese in dispute, and that this case would take some very creative problem solving. – Anonymous

295) "You both can agree that your view of the cheese has some "holes" in it? - John G. Johnson (NIM)

296) "Fluffy and Butch, thank you for selecting me as your mediator in your conflict. Before we get started, however, as per Section 9 of the Uniform Mediation Act, I need to tell you that although I do believe that I can be impartial in this mediation, Fluffy's family has often chased my family around the house." - Anonymous

297) "As your mediator, part of my job is to help you expand the cheese." - Phillip M. Armstrong

298) "So if I can settle your dispute, do I get the cheese as my fee?"
Michael P. Carbone

299) "Yes, besides being a trained mediator, I am also the author of "Who Moved My Cheese?" - Anonymous (See, Spencer Johnson, Who Moved My Cheese)

300) "Thank you for meeting with me to resolve ownership of the cheese. At your request I will keep it for you temporarily, provided you agree that my fee may be taken out of it in nibbles."

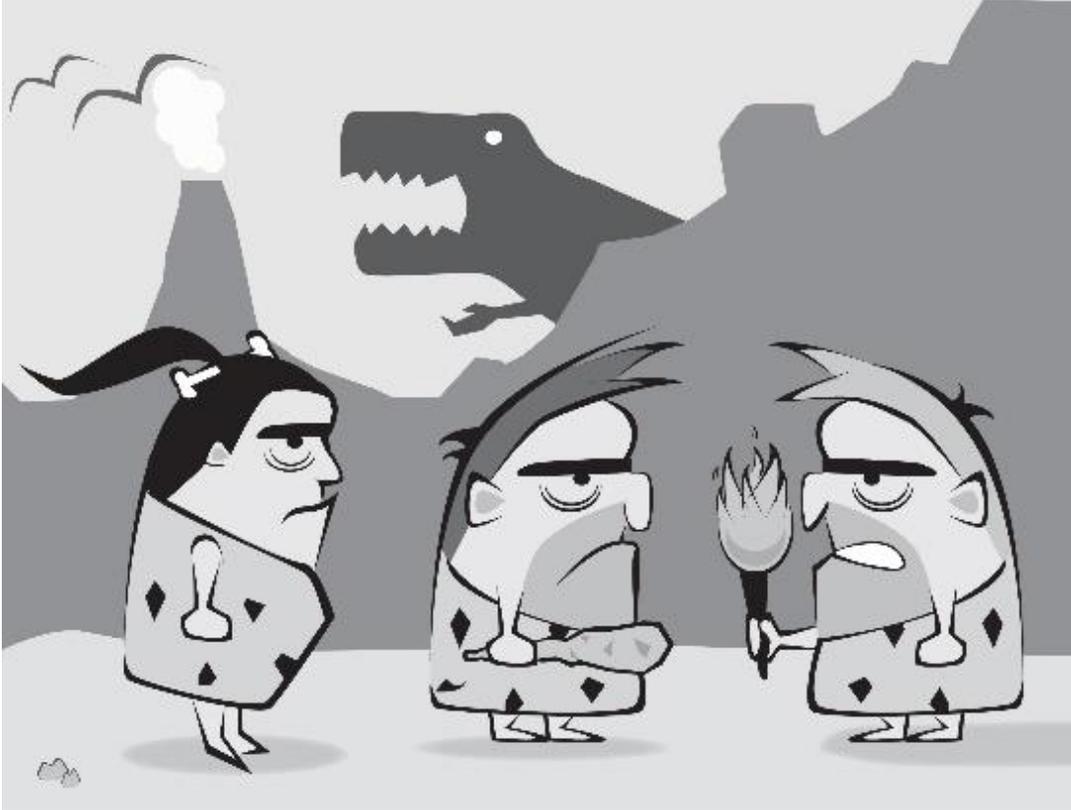
301) "I need to know whether this is a court ordered mediation, or whether one or both of you have an appetite for mediation." - Ed Roy III



Cave man, cave woman, B.C., fire,
club, dinosaur

Write your caption here.

2008 Fall, Art by Dan Mazanec



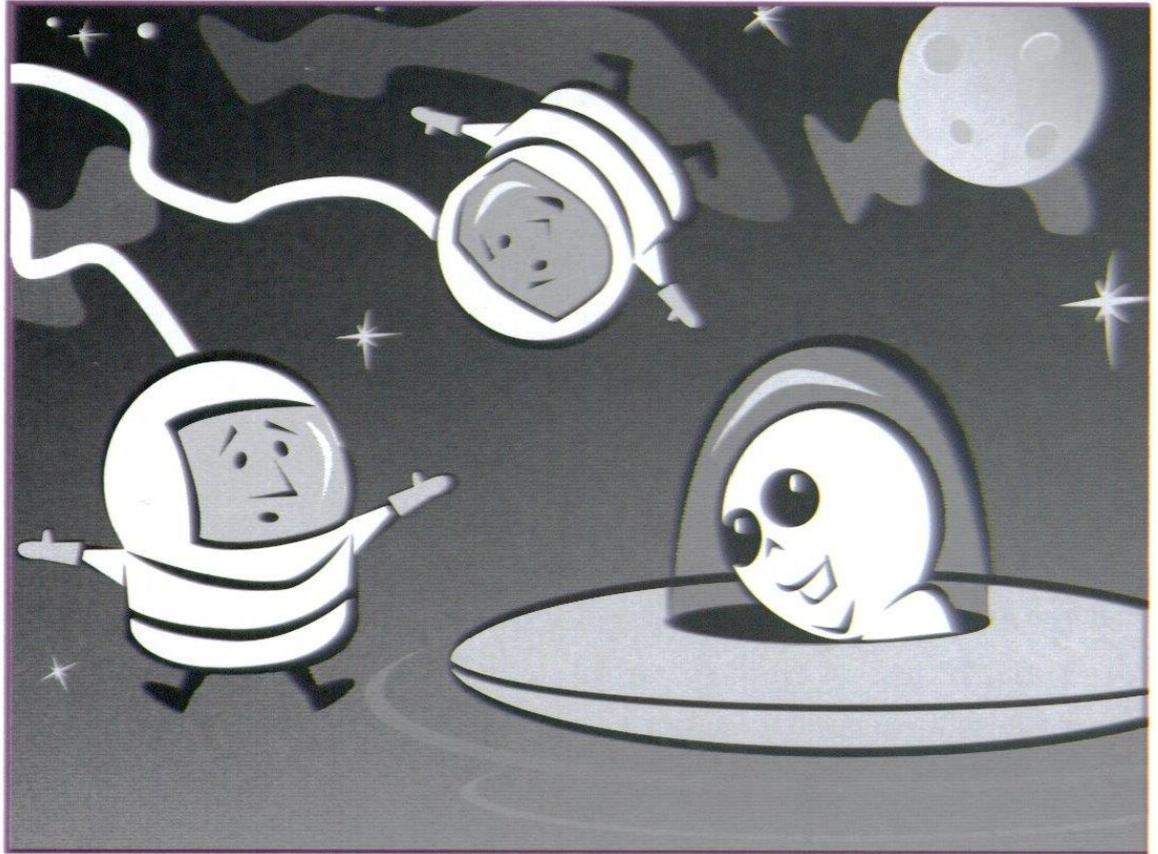
307) "Relax. My client just needed to step out to blow off some steam. He'll be back." - Peter R. Silverman

308) "We spent a fortune litigating whether I stole your idea for the wheel. Now it's fire. This time, we're going to mediation!" - W. Barry Blum

309) "Dispute Resolution in 10,000 B.C. (before collaboration)." - Jonathan A. Weinman

310) "Yes, yes. Someday they'll come up with a better alternative for resolving disputes. But until then it's still, "Fire burns club. Club hits cave woman. Cave woman blows out fire." Now, go on three and the loser has to go kill dinner." - Robert Wight

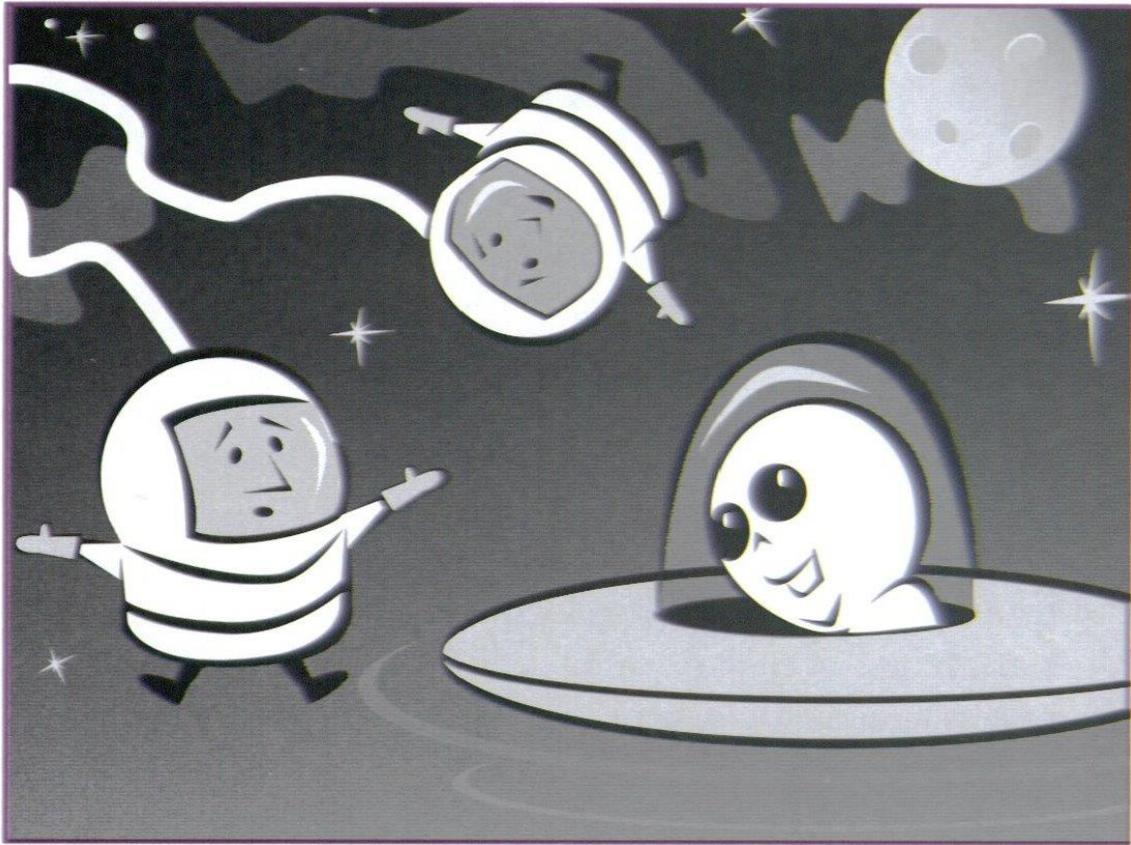
311) "OK. Let's review the agreement that was reached at mediation. Sam has agreed to club it and Mark has agreed to cook it. Both of you will be entitled to joint and equal credit for dinner. Agreed?" - Curtis J. Crowther
2009 Winter, Art by Dan Mazanec



Alien, space, tethered, outer space

Write your caption here.

2009 Winter, Art by Dan Mazanec



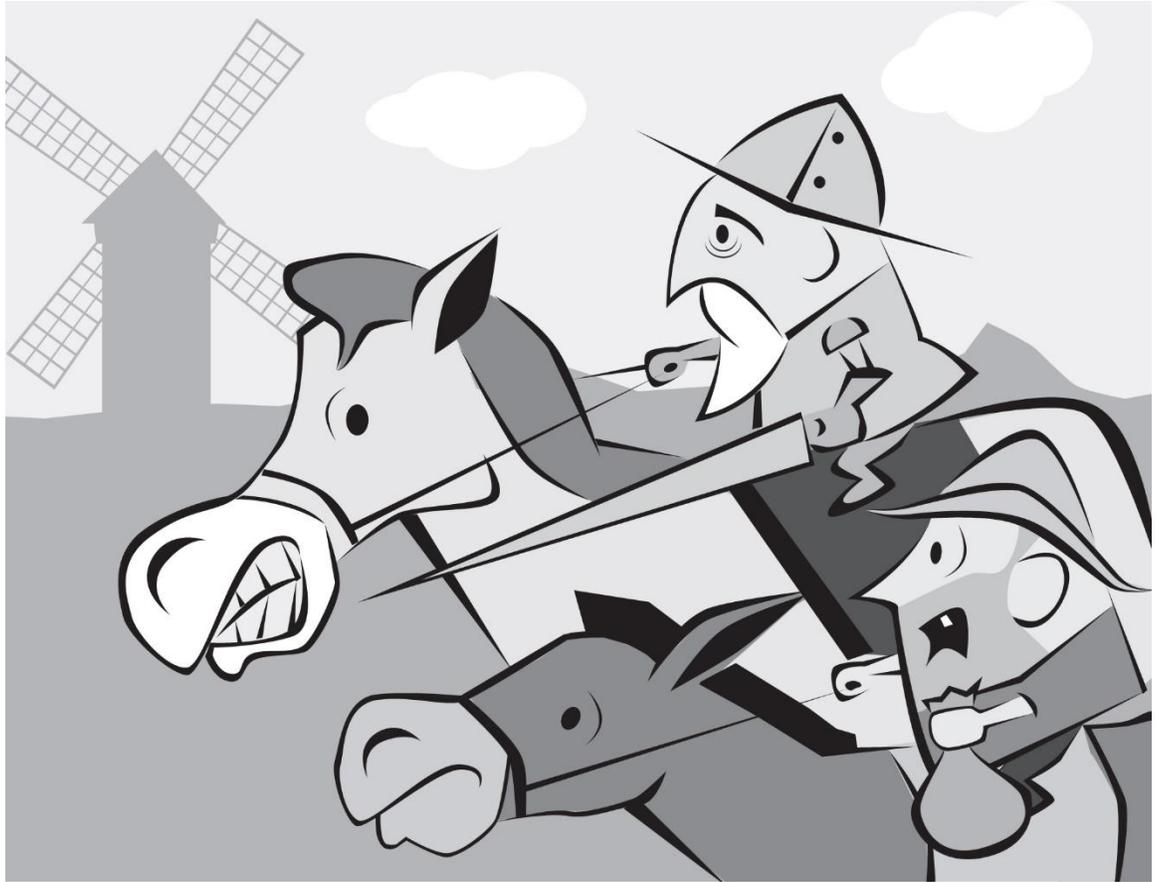
302) "You would think your company could make credit card arbitration more accessible." – Tim Roy

303) "Sorry judge. We just can't settle for that amount. Our client has us on a short leash!" - Amy Schmitz

304) "That settlement proposal is really far out." - Robert Dokson

305) "He just doesn't understand the gravity of the situation." - Kathleen Bird

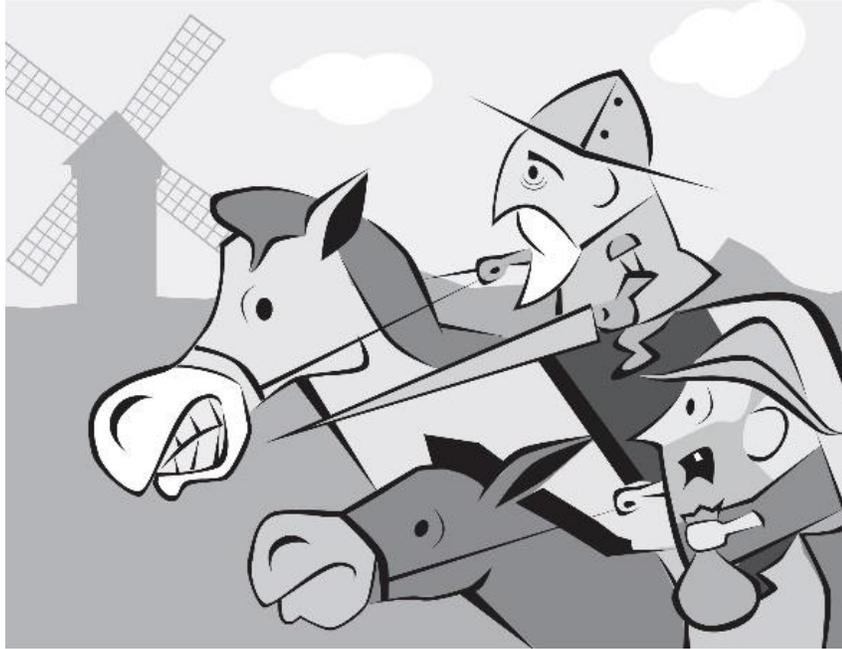
306) "When I said, "Houston, we have a problem," I didn't mean a relationship problem." - Elizabeth Kent



Don Quixote, Sancho, windmills

Write your caption here.

2009 Spring, Art by Dan Mazanec



312) "It's time for us to quit horsing around and get this matter settled." - Robert N. Dokson

313) "OK guys, remember, Don is the good cop and Sancho is the bad cop" - Barbara A. Res

314) "You go on and tilt at that thing if you want to, I better get this settlement money in the bank" - Jack Davis

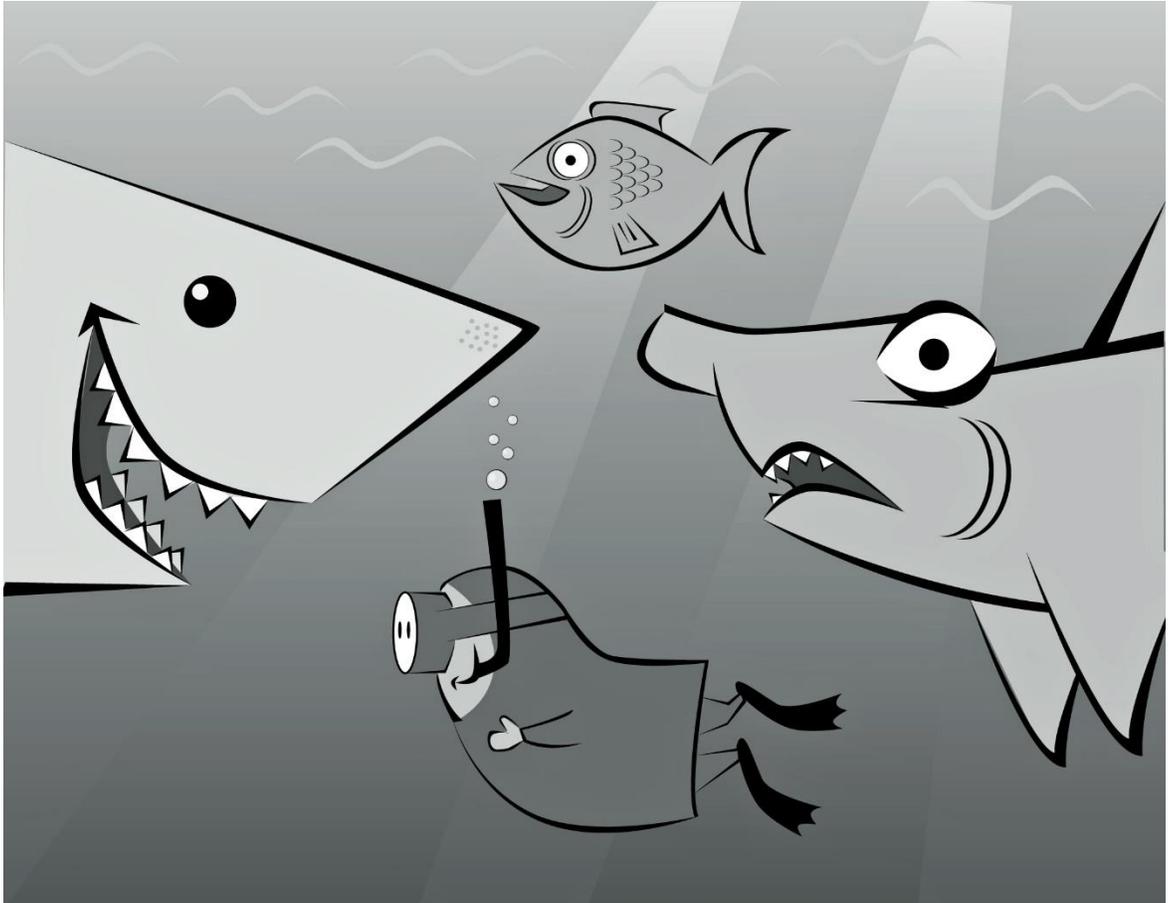
315) "I thought an apology would be sufficient, but I guess I underestimated!" - Marc Bouret

316) "I might be riding the donkey, but you're the jackass who accepted their last "take it or leave it" offer." - Ed Roy

317) "Did I neglect to mention that we discourage positional bargaining?" - KellyAnn Traver

318) "Sire, I think mediation would have provided a less painful result than attacking the windmill!" - Antonio Sanchez-Pedreno

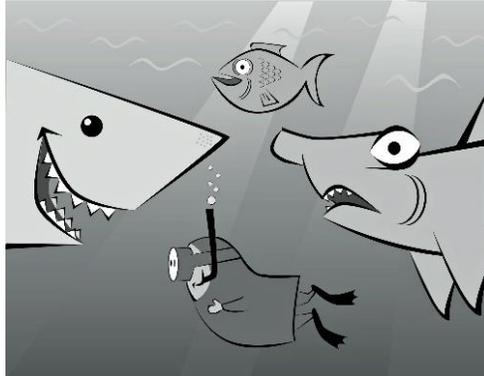
319) "We've been riding for days Rick and have searched every cave on the continent. Let's just face it. There's no such thing as a magic BAT-NA out there." – Jordon Kimura



Sharks, swim, SCUBA, snorkel

Write your caption here.

2009 Summer, Art by Dan Mazanec



320) Frank regretted not agreeing to mediation. When his attorney said he'd be entering "shark-infested waters," he thought it was just a figure of speech. – Katherine Char - (NIM)

321) "As a matter of professional courtesy, shall we let the lawyer have a 'pass' this time?" - Elizabeth Kent

322) "Come on, we're sharks! We don't negotiate over dinner!" - Erin Kalopodes

323) "Have I told you guys my predatory lending joke yet?" - Brian McEwing

324) "He is coming into my jurisdiction and I don't think he is protected by the New York Convention. I can eat him without worrying about getting dragged into international arbitration." - Michelle Kim

325) "You get the snorkel, and I'll get the mask. Then we'll have what I call negotiating leverage." – Tony Donnes

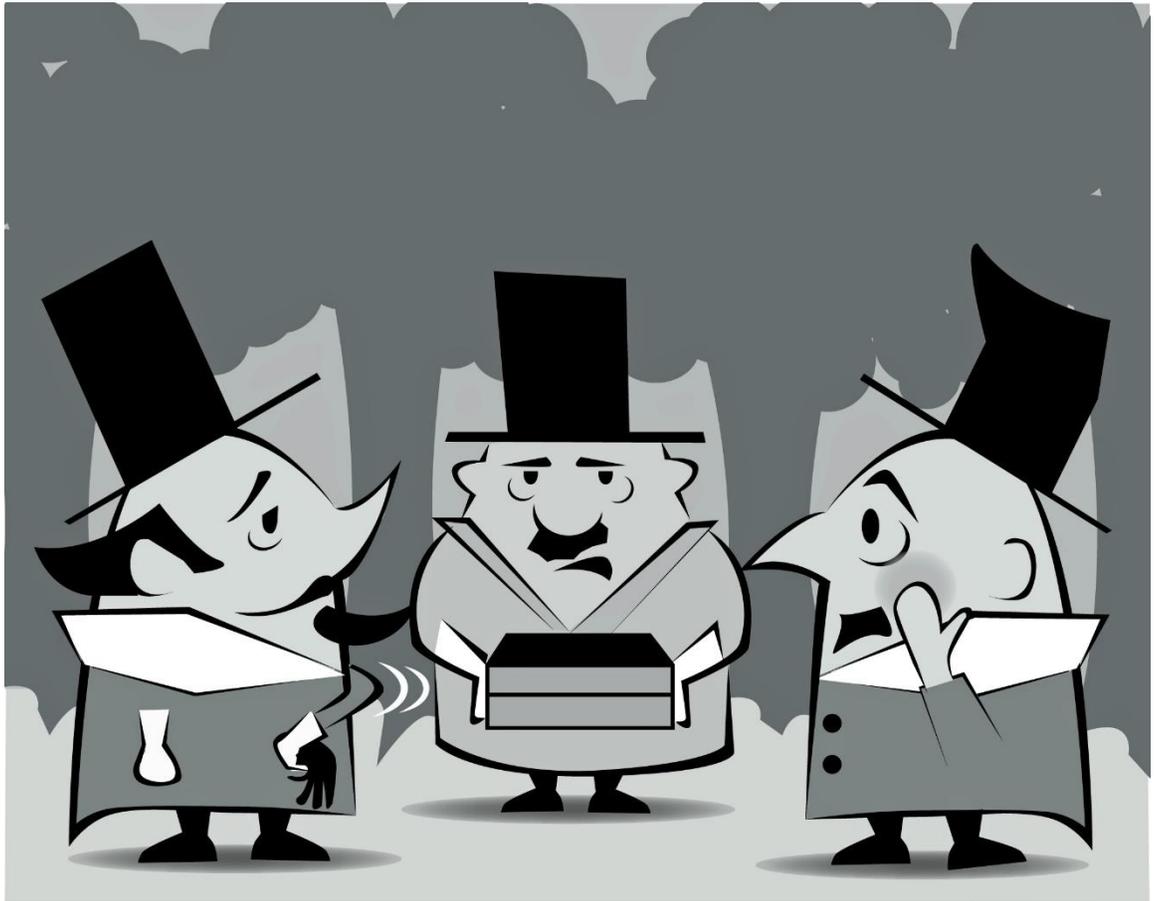
326) "To settle this case, I became "chummy" with the lawyers." - Patricia Cowett

327) "Let's put our disagreement aside and focus on how we divvy up the mediator." - A. Alan Cade

328) "I think this mediator is in over his head." - A. Alan Cade

329) "I am glad we are in a state that does not have an ethical prohibition against what we are about to do." - A. Alan Cade

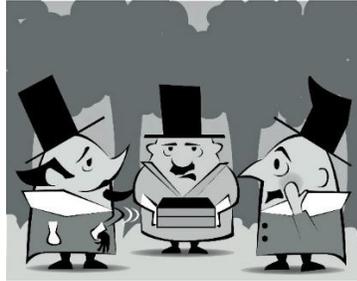
330) "Well - the mediator sure brought us all together on one point." - A. Alan Cade



Duel, mediate, challenge,

Write your caption here.

2009 Fall, Art by Dan Mazanec



331) "I said "dual" influence, not "duel" influence!" - Gary P. Hunt

332) "It looks like we failed to separate the people from the problem." - Jason Nicholas

333) "Yeah... This might be a good time to take a 15 minute break so you fellas can reflect on your BATNA and WATNA." - David Barnette

334) "You want another fresh one? Make me a decent offer!" – Edward Shihaga

335) "Take back your glove, monsieur. It is never too late for mediation." W. Seaborn Jones

336) "I thought the mediator was supposed to be impartial, but it looks like he supports your position." – Jason Nicholas

337) "I am beginning to think I upset you with the Barkai Chorus. Can you tell me more about that?" - – Jason Nicholas - (NIM)

338) "Dueling" gives a whole new meaning to BATNA." - (NIM)

339) "Now you guys see why I have a perfect record of never having to declare impasse." - (NIM)

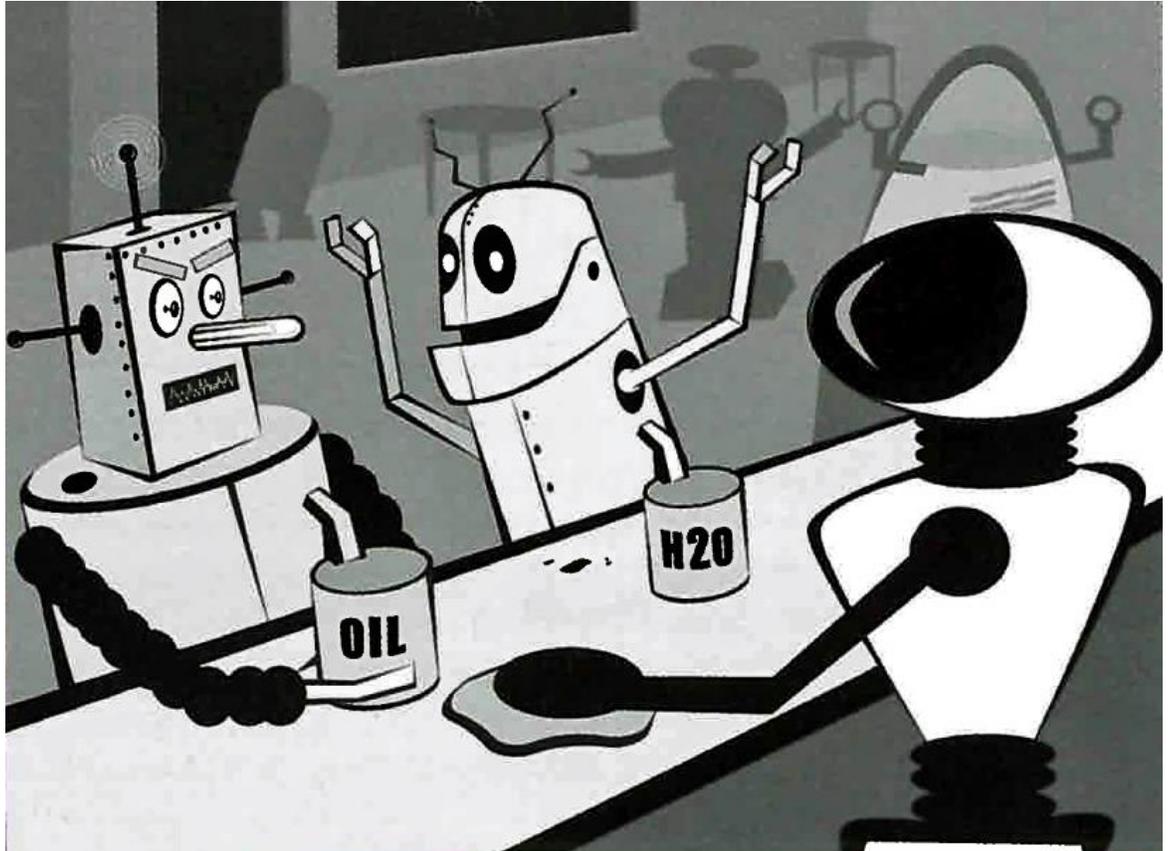
3340) "This is one of my favorite techniques to avoid ever having to declare impasse!." - (NIM)

341) "You guys had the chance to select MED-ARB but you agreed to MED-DUEL." - (NIM)

342) "We thought you said you were also going to mediate the rules of engagement." - (NIM)

343) "When I am forced to resort to this technique, I have assured myself a 50% reduction in the mediation fee." - (NIM)

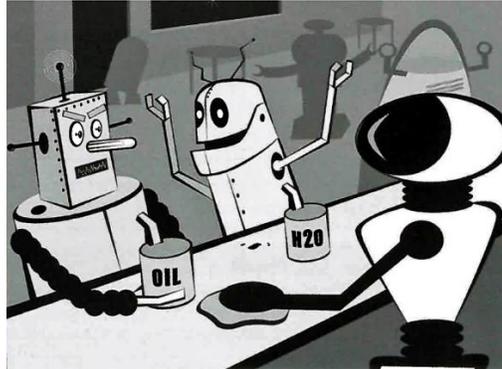
344) "Clearly, one of you will not have to worry about breaching mediation confidentiality." - (NIM)



Robots, water, oil, mix,

Write your caption here.

2010 Winter, Art by Dan Mazanec



345) "She looks like a regular Bartenda-3000 model, but under the hood, she's got the latest Mediation-Matic, evaluative sub-type chip! Give her a try, Rob - upload your issues!" - Barron Oda

346) "You know what really burned my oil, Frank? The guy was a total robot – he was totally fixated on his position and didn't even care about my interests!" - Dane Anderson

347) "She is only going through the motions like a robot - she needs to attend the next ABA DR Section Conference!" - James G. Stewart

348) "She got the nuts, bolts and all the oil. But at the end of the negotiation, I got my freedom." - Nani Ferris

349) "She says we can get beyond that "oil and water don't mix" idea if we think outside of the box." - Patricia Cowett [JB 9 dot exercise]

350) "Look Fred, you just gotta learn to separate yourself from the problem in negotiation instead of downing a barrel of oil every time your robo-ego gets dented." - Stephen Wood - (NIM)

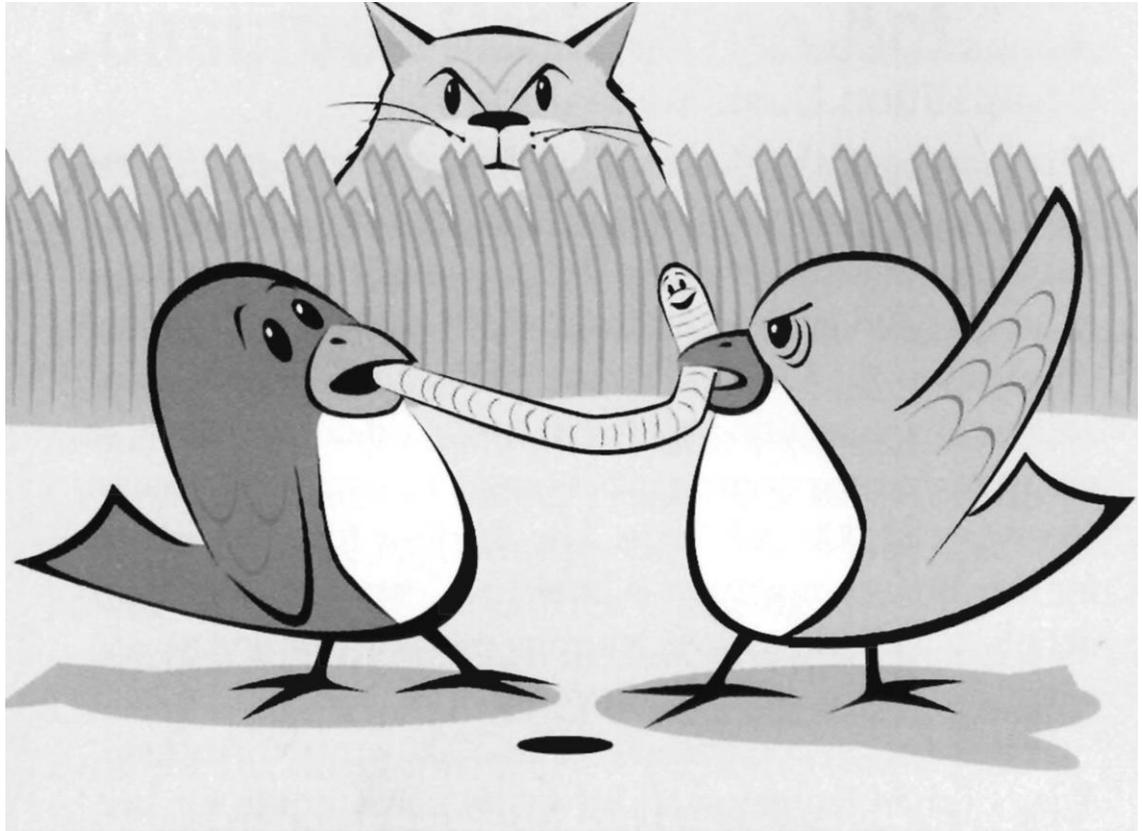
351) "Let's be rid of the emotion and try an emulsion!" - Jerry P. Roscoe {JB cite beyond reason}

352) "See? A good bartender and a good mediator can make us mix." - Harry N. Mazadoorian

353) "Honey, I don't understand. Before you filed for divorce, our discussions were far more fluid." - Edgar Roy III - (NIM)

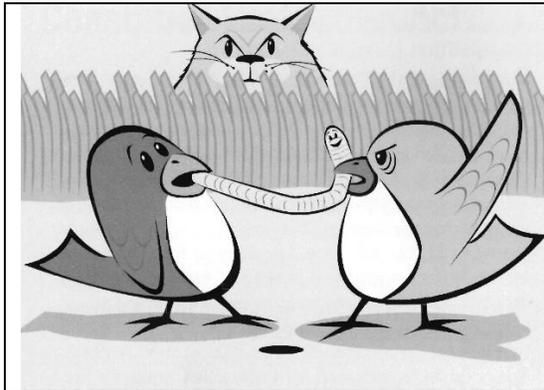
354) "I can see that you are a well-oiled machine and the defendant is just squeaking in his opinion, but we still need to mediate this". - Alan Cade

2010 Spring, Art by Dan Mazanec



Birds, worm, early bird, cat, lurking

Write your caption here.



Negotiation haiku:

) Negotiation haiku:
Birds see only positions
Ignore interests
Perish

- Michael J. Timpane

356) "The CATNA. An elusive mediation component – always lurking behind the scenes waiting for an impasse." - Troy Sonnenberg

357) "Soon, it would be the cat influencing the birds' BATNA" - Dane Anderson

358) "Little do they know, the mediator is neither neutral nor impartial." – Stacy Adachi

359) "Gentlemen, I realize facilitative mediation may not be in all of our best interests. Let me introduce you to my partner, Whiskers – he's the evaluative type and I think he's just what you need!" - Barron Oda - (NIM)

360) "Don't look now but I think our WATNA just arrived." - Amy Glass

361) "In fighting over the little problems, we often lose sight of the big ones." – Danny Patel

362) "Sometimes when you are busy negotiating about lunch, you forget that you could become dinner." - Margaret Ransone - (NIM)

363) "We should have been more suspicious when the mediator described himself, his credentials, and his experience, by adding: 'I've got a lot of feathers in my cap!'" - Brett Bell

364) "Wally the Worm fell behind in the negotiation process, but significantly improved his leverage by involving his CATNA." – Joseph Weismantel - (NIM)

365) "What do you mean 'no litigation risk?!' If we can't agree how we're going to divvy up this worm quickly, there's a 50% chance one of us is lunch!" - Curtis J. Crowther - (NIM)

366) "We are going to resolve this conflict, if it is the last thing I do." - Alan Cade

2010 Summer, Art by Dan Mazanec



Raccoon, mountain man, mediate

Write your caption here.

2010 Summer, Art by Dan Mazanec



367) “Well, this ain’t quite what I reckoned when you said your attorney had reputation for being an animal in settlement disputes.” – Catherine Gibson

368) “If only they understood interest-based negotiation, they would have been able to figure out that one of them wants to have the raccoon for dinner and one wants to make a hat.” – My Karlsson - (NIM)

369) “I don’t trust the coon to be a neutral mediator. She has an interest in the garbage problem too.” – Cayce Greiner Smith

370) “Coy. I just ain’t comfortable with your choice of mediator. He done knocked over my trash can twice and I saw you buyin’ all those sardines the other day at the Mega-Mart.” – David Barnette

371) “We may be having a problem communicating through this Mediator.”
- A. Alan Cade

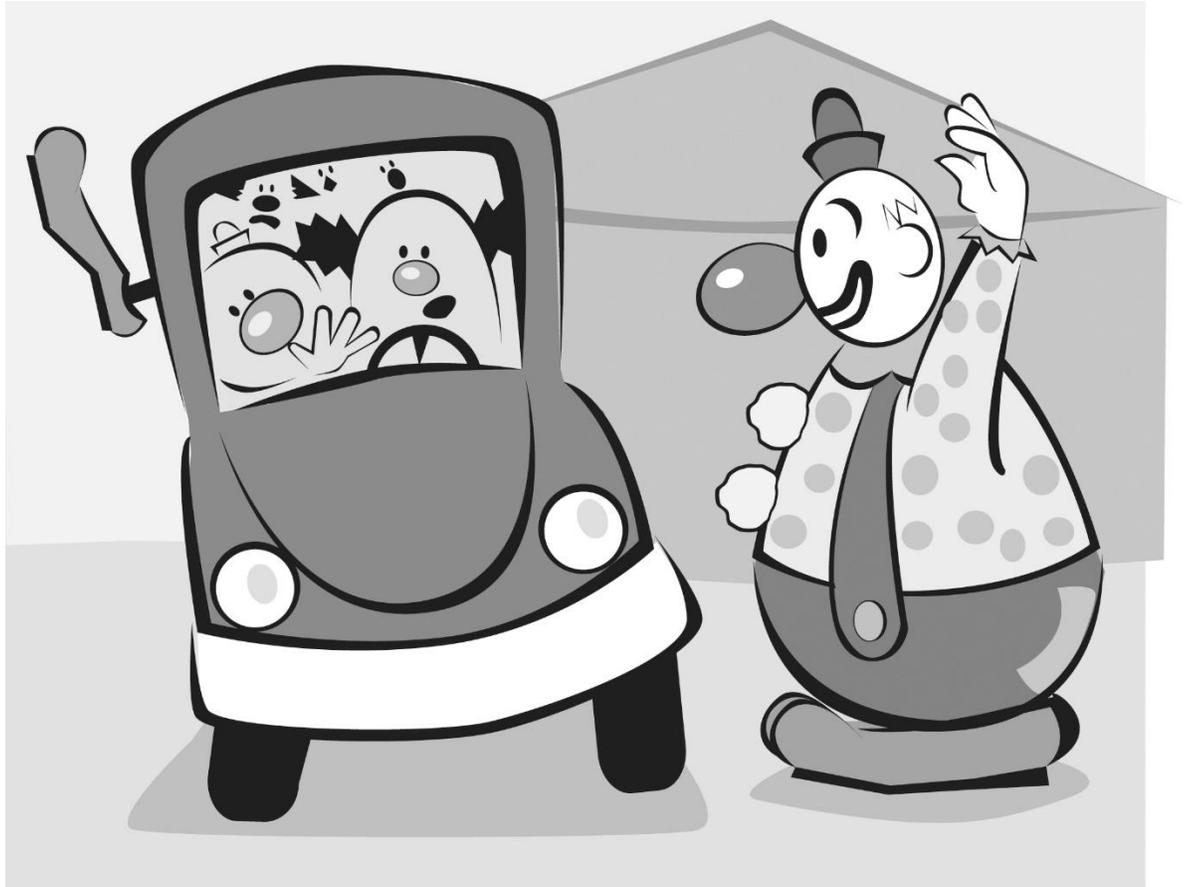
372) “I don’ know about you, but I’m glad we got the best mediator in Kentucky.” - Jason Nicholas - (NIM)

373) “When they described mediators as warm and fuzzy, I didn’t know they included small woodland creatures.” - Raven Stanley

374) “The way that I usually settle my difference is by giving them rabies. You guys might want to try it out.” – David Bushnell

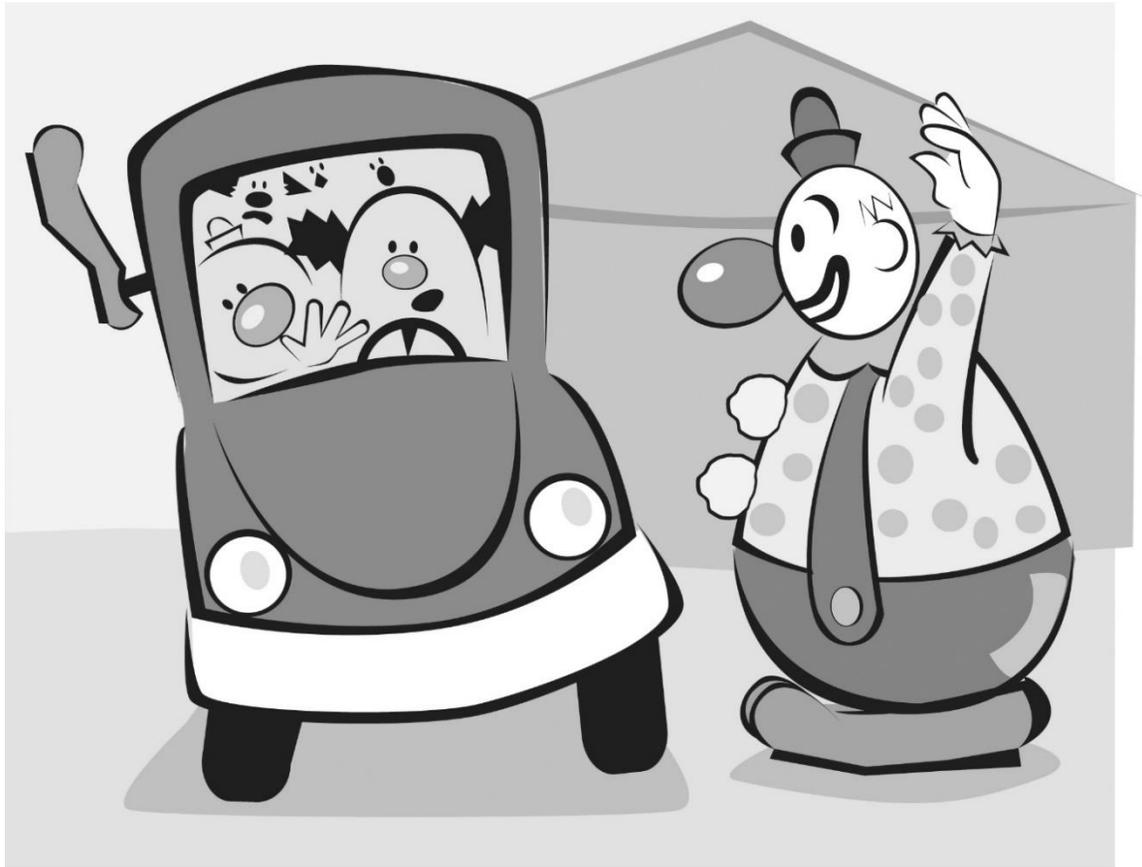
375) “What’s with the eye mask? We don’t need BATNAman to mediate this dispute.” - Jennifer Crawford - (NIM)

376) “Sure, I know some great mediators. Their names are Mr. Smith and Mr. Wesson!” – Barron Oda



Clown, clown car Bozo, bye

Write your caption here.



377) "Toodles, ya'll! Great settlement! And remember, Big Top Circus Mediation Services is your fun source for class action ADR!" – James P. Stanton

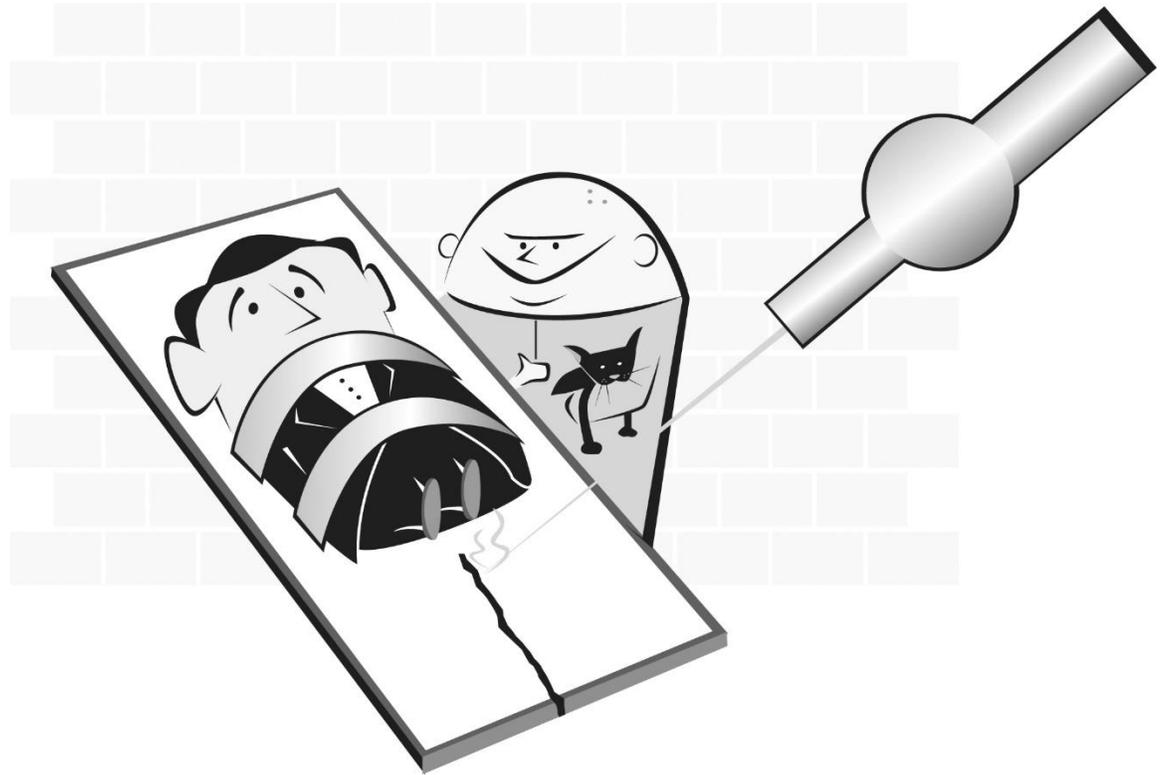
378) "I know the mediator said that it would be informal, but that was too much." - A. Alan Cade

379) "I didn't really mean it when I said any clown should be able to settle the dispute." - Curtis J. Crowther

380) "How did he negotiate his way out of this fiasco?" - Art Hinshaw

381) "Wow – the mediator really did put himself in our shoes." - A. Alan Cade

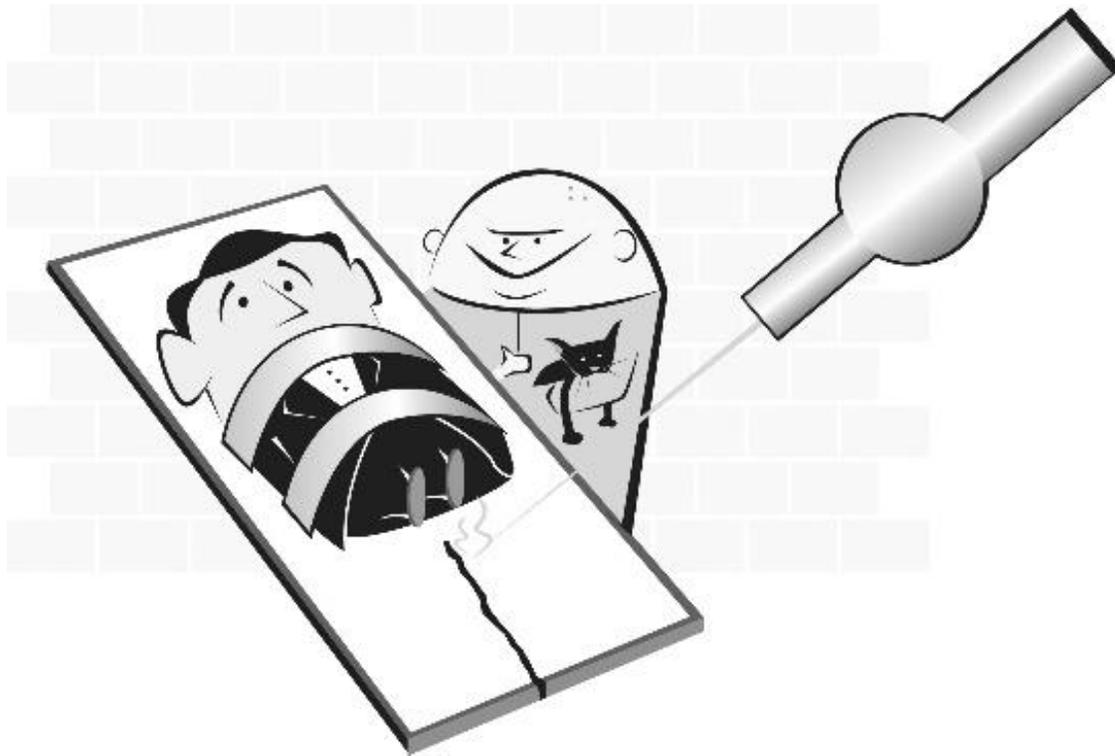
2011 Winter, Art by Dan Mazanec



Laser, split, divide, James Bond

Write your caption here.

2011 Winter, Art by Dan Mazanec



382) "Can we change to interest based negotiations? I don't like my position." - Evan Chaffin

383) "I know it's a little late to bring it up, but I don't suppose you would be willing to mediate, would you?" - Robert N. Dokson

384) "Would you mind telling me where you received your ADR training?" - A. Alan Cade

385) "We have ways of making you tell us your bottom line." - Lee Jay Berman

386) Thanks to new technology, Getting to Yes just got easier and faster. - Hazel Warnick

387) "I hate it when arbitrators "split the baby" but, in this case, you leave me no choice, Mr. Bond." - Manuel Pelaez-Prada

388) Mediator Methods: Facilitate, Evaluate, and Intimidate - "Now do you want to settle?" - Ngoc K. Le

389) "Now, exactly what is your BATNA?" - Jacqueline D. Shipman

2011 Spring, Art by Dan Mazanec



Bull, rodeo, wild ride

Write your caption here.

2011 Spring, Art by Dan Mazanec



390) "Being a mediator is like riding an angry bull at the rodeo. Sometimes I just want to shout, "Send in the clowns!" – Tiare Nakata

391) "My hands are tied. My client's mind is made up, and I'm just along for the ride." - Ryan Frank - (NIM)

392) "Suddenly, Fred's mediation strategy of taking the bull by the horns seemed like a bad idea." - John Stacy

393) "I think it's time for a caucus, buckaroo!" - Michael P. Carbone

394) "Well, actually, I was hoping to hide behind the Mediator." - A. Alan Cade

395) "I told you not to take the first offer!" – John Kwong

396) "YeeeHaw, they said that mediation is evolving into the Wild West but who would have thunk!" - Mary Culbert

397) "It's only an 8 second ride....," That's easy to say from your position." - William Belcher

398) "In a barrel is better than over a barrel. I got me a WATNA!" - Morgan Constantino



Lemonade, cats, black cats, drink

Write your caption here.



The following captions were never published in the DRM.

399) “Always one to value others’ interests, Sue only used the best lemons in her lemonade – and the best catnip. – Alaya De Leon

400) “Whether in meditation or in running a lemonade stand, you got to show’em the glass is ‘half-full’, not ‘half-empty’”. - Danny Lunsford

401) “We appreciate your concession on the lemonade, but our interests are really measured in mice.” - Daniel Newby

402) “I know we went out looking for a milk stand, but let’s start the compromising process by settling for lemonade.” - A. Alan Cade

403) “In every mediation, when a party gives me lemons, it is my job to make lemonade!” - Jim Stewart

Designed for 2008 Summer (but the issue was not published)
Art by Dan Mazanec



Boiling pot, into the fire, fine mess,
natives

Write your caption here.

Designed for 2008 Summer issue, Art by Dan Mazanec



404) "Well, how was I supposed to know that "Evaluative Broad" was a mediation style and not her nickname?!" - Michelle Walker (NIM)

405) "Did you tell them we were professional negotiators?"
"Yeah. They said they would discuss our proposal after lunch!"
- Tamatoa Jonassen. (NIM)

406) "Told you we shuda offered them a concession!" - Mike F. (NIM)

407) "Are you telling me this was our BATNA?" - Peter Boucher (NIM)

408) "Allan Quatermain's low-balling landed Sir Henry in hot water once again!" - R. Hermann Heimgartner (NIM)

409) "When I agreed to alternative dispute resolution this is not what I had in mind." - Lauren Wilcoxon (NIM)

410) "I've heard of negotiators putting feet to fire, but..." - Joni Domingues (NIM)

- 411) "We did say that we wanted some time to stew things over." - Joni Domingues (NIM)
- 412) "I guess an apology won't be forthcoming." - Joni Domingues (NIM)
- 413) "I hope you had a BATNA in mind because our negotiation has just gone horribly wrong!" - Jennifer Shimada Heimgartner (NIM)
- 414) "How was I supposed to know that this is what they meant by 'having us over for dinner!'" – Anonymous.
- 415) "I don't know John. Maybe we should've considered our BATNA before setting our bottom line so high." - Devon Catalan (NIM)
- 416) "When I said you better used Barkai's cross-cultural negotiation lessons or we'd be in hot water, I didn't know it would literally be boiling." - Khara Jabola-Carolus (NIM)
- 416a) "Do you think they'd be willing to separate the people from the problem?" - Roy Kwon (NIM)
- 417) Can I take it they are rejecting our last offer?" - Loren Seehase (NIM)
- 418) "I guess "Howdy" means something different down here." - Garrett Halydier (NIM)
- 419) "I told you we should've taken the law school Negotiation & ADR class." - Louise Togiaia (NIM)
- 420) "I guess this is one form of alternative dispute resolution. I would have much preferred mediation." - Joelle Yamamoto (NIM)
- 421) "Got any better ideas? I don't think they liked that proposal." - Shauna Imanaka
- 422) "Are you sure that Barkai fellow knew what he was talking about when he taught us about cross-cultural negotiations?" - John Reiss (NIM)
- 423) "Okay Evans. I guess I concede your point. They are cannibals." - Marcus-John Busekrus (NIM)
- 424) "Don't worry, they're just bluffing. We need to stick to our offer." - Devan Kawakami-Wong (NIM)
- 425) "Maybe we should have thought about our BATNA earlier." - Natalie Pagoria (NIM)

426) "Dam! I'm thinking I underestimated our WATNA." - Aloma Badayos (NIM)

427) "Things are heating up Johnson. Do you think this would be a good time for a caucus?" - Tabitha Chiu (NIM)

428) "I suppose we should have agreed back at the joint session." - Julie Oliverira-Payton (NIM)

429) "We should have been more culturally sensitive." - Logan Rodrigues (NIM)

430) "Looks like those cross-cultural negotiation classes are really going to come in handy. " - Ericka Schmidt (NIM)

431) "I think we may have miscalculated our WATNA." - Sean Smith (NIM)

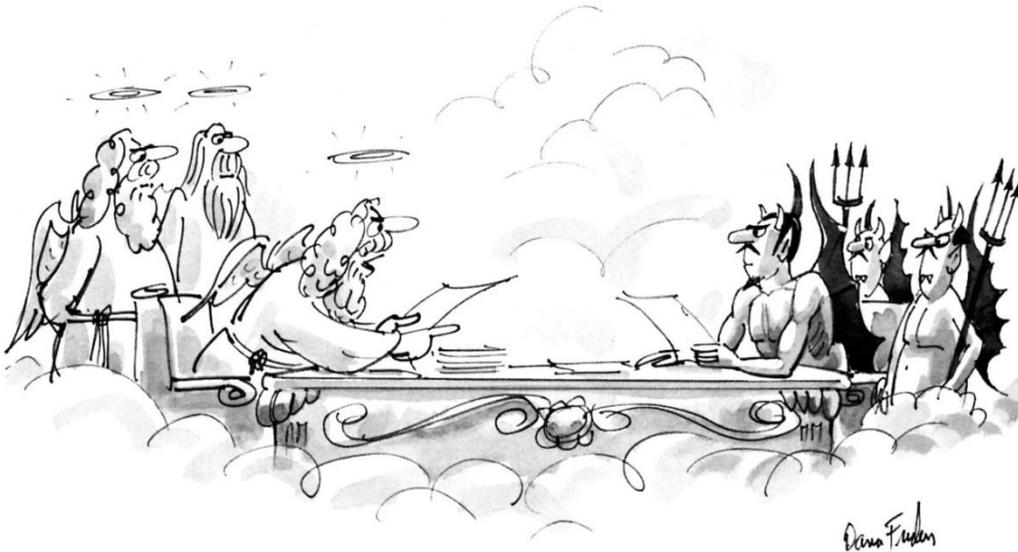
April 20, 1987, New Yorker Magazine
Art by Dana Fradon,



Write your caption here.

This cartoon led to the cartoon captioning contest in the ABA Dispute Resolution Magazine. I was on the planning committee for the American Association of Law School's 1996 Mini-workshop on Alternative Dispute Resolution at the January 1996 Annual Meeting in San Antonio, Texas. During our planning session in Washington D.C., I mentioned that I put a cartoon captioning question on my ADR exam. Our planning group asked me to run a version of my cartoon captioning contest at the ADR one-day mini-workshop before the main AALS meeting in Jan. 1996 in San Antonio. I did and it was quite successful. The original 15 "winners" of that captioning contest appear on the next two pages along with several others created when I used this cartoon in other classes and trainings. Later that year, I was asked to run the Lighter Side Cartoon Captioning Contest in the A.B.A.'s ADR Section's Dispute Resolution Magazine. That captioning contest ran for 14 years. I use the above cartoon for the cartoon captioning contest in San Antonio. This Angeles-Devils cartoon remains one of my favorites. I use it in almost every Negotiation and ADR training I do, and it is an important component of and is referred to in my article called, "Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil," 75 Nebraska Law Review 704 (1996).

April 20, 1987, New Yorker Magazine
Art by Dana Fradon,



432) "This guy's a lawyer. Normally, we let you have the lawyers, but I think we will take him. He taught ADR!" - Ann Woodley, University of Akron Law School

433) "Tell Newt, we will cut collection plate requests and wasting time on lost souls, but we will not agree to delegate salvation decisions to the states." - Fred Galves, McGeorge School of Law

434) Devil: "I feel that not only don't you acknowledge anything positive about my position, but you can't even say anything good about me."
Angel: "Well, I'll give you this: you're persistent." - Leary Davis, Campbell University School of Law

435) "That's my final offer - ten angels and Gideon's Trumpet - in exchange for a lifetime supply of those outstanding barbecued ribs you make down there." - Sarah Rudolph, Creighton University School of Law

436) "And who do you suggest would ever in their right mind mediate between us?" - Scott Hughes, Thomas M. Cooley Law School

437) "I think it's important to recognize that we both share a concern about the afterlife". - Marc Fleisher, Brooklyn Law School

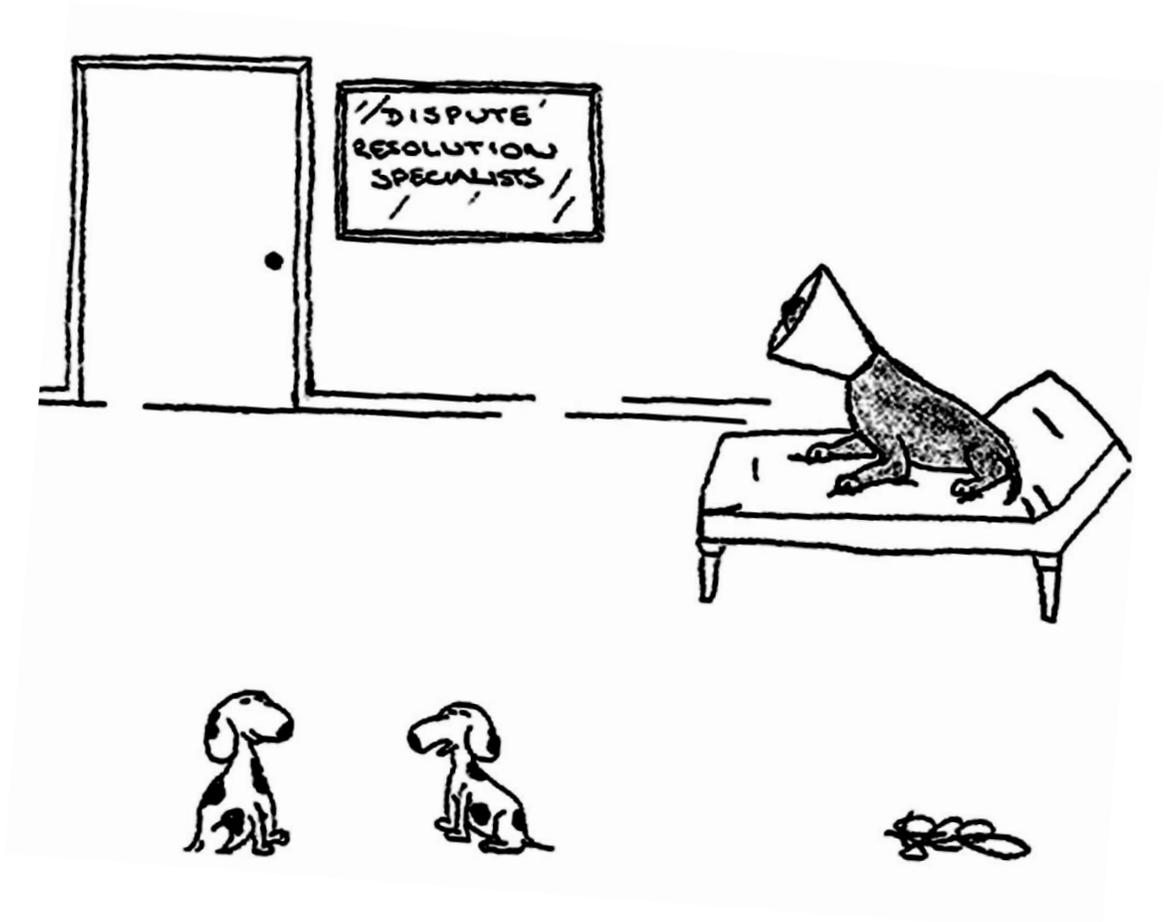
438) "I want to make it clear up front, that we're ready to take this one to trial." - Dick Wirtz, University of Tennessee College of Law

- 439) "O.K. O.K. So we all agree. Milton will be the mediator." - Bill Patton, Whittier Law School
- 440) "Final offer? What do you mean "final offer?" - Lynn Hogue, Georgia State University College of Law
- 441) "Surely we can find common ground!" - Marjorie McDiarmid, West Virginia University College of Law
- 442) "OK, we will agree to turn down the heat to 900 degrees, and even to put in a good word on Satan's latest appeal, but demanding that Genesis contain a "But see the Satanic Bible' explanatory footnote is completely out of the question." - Fred Galves, McGeorge School of Law
- 443) "Forget it! Satan blew his tenure chances a long time ago, so he must spend eternity either grading exams or attending faculty meetings." - Fred Galves, McGeorge School of Law
- 444) "No, we will not accept a lawyer as a mediator!" - Scott Hughes, Thomas M. Cooley School of Law
- 445) "You can't say the devil made you do it" - Anonymous
- 446) "Of course. all the lawyers are on your side." - Anonymous
- 447) "I sense that you're using the "bad-guy bad-guy" negotiation tactic on us again." - Anonymous
- 448) "Don't try to say anything like "see you in court." You guys know that we do not have any lawyers here." - Anonymous
- 449) "You've got to stop taking such hard-line positions for us to continue negotiations. I mean, what's your interest in having the whole place being a "smoking" section?" - Anonymous
- 450) "Based on what you just said, can I assume you won't be applying the ideas from Getting to Yes" in this negotiation?" - Anonymous
- 451) "So what you're saying is the view is bad and the heat makes you irritable?" - Anonymous
- 452) "BATNA out of hell." - Anonymous
- 453) "OK, we'll take the car salesmen but no way in heaven you'll get us to take the talk show hosts." - Anonymous

- 454) "But we agreed that you get the professors and we get the students." - Anonymous
- 455) "You have to take Lemuel Boulware if you want us to take Professor Barkai. Take it or leave it." - Anonymous
- 456) "Are you sure people will pay \$30 for this Pepulator thing?" - Anonymous
- 457) "Don't try that good-guy bad-guy routine with me, buddy. I can see right through it." - Anonymous
- 458) "I have a sneaking suspicion you guys are pulling a good-guy bad-guy routine on me again." - Anonymous
- 459) "I'll need to take your offer to a higher authority. I am not authorized to agree to that." - Anonymous
- 460) The epitome of cross-cultural negotiations. - Anonymous
- 461) "Of course, we're right. You're the ones burning in Hell." - Anonymous
- 462) Tit-for-tat strategy: "I've been nice, clear, and forgiving but since you provoked me, I will retaliate." (Anatol Rapoport in Robert Axelrod's tournaments – Prisoner's dilemma) - Anonymous
- 463) "Take it or leave it" is unacceptable, especially since your BATNA is to "go to hell." - Anonymous
- 464) "I only have one "position," and that is that everybody must read "Getting to Yes" before we begin this negotiation." - Anonymous
- 465) "I can tell you haven't read the latest edition of Getting to Yes." – Anonymous
- 466) Applying Ho'oponopono in the big negotiation. "I don't know if the forgiveness stage of this Hawaiian dispute resolution process is going to work for us." - Anonymous
- 467) "What do you mean the 10 commandments are not objective criteria?" - Anonymous

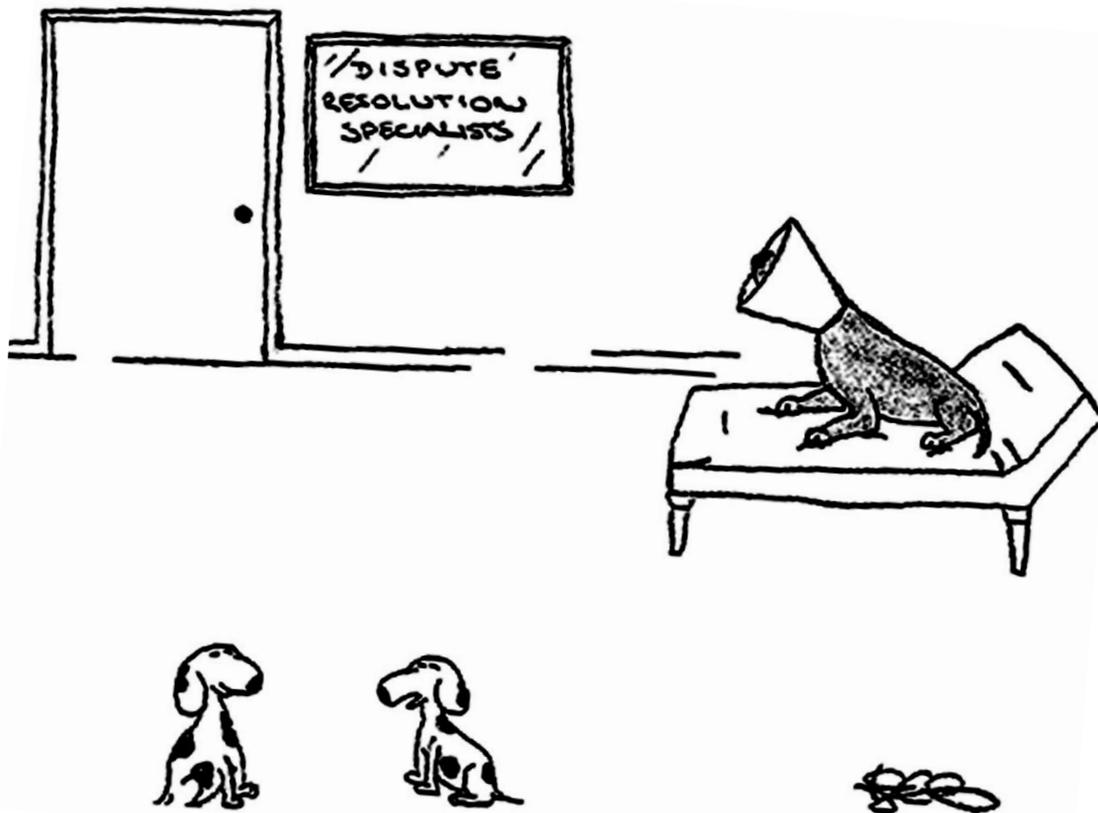
Last Cartoon

This cartoon was designed for the ABA Dispute Resolution Magazine cartoon captioning contest, but the contest was ended before this cartoon was published.



Write your caption here.

Last Cartoon



468) "I'm guessing that it's just an act to get the evaluative mediator on his side." Michelle Moorhead (NIM)

469) "I'm thinking this mediator views the problem narrowly." - Jon Hatfield (NIM)

470) "That's the Defendant's Counsel - he's all bark and no bite!" - James G. Stewart (NIM)

471) "He can never see it from our point of view. You kept saying it was because he had blinders on, but I didn't think he'd literally did." - Marisa Blancarte (NIM)

472) "I don't know if he's willing to hear what we have to offer." - Kei Kitatani (NIM)

- 473) "I hear Rufus isn't very open-minded when he negotiates. He can't see anything besides his own point of view." - Jamie Fukumoto (NIM)
- 474) "I think it's time to take the cone off so he can see the bigger picture." - Kristin Shinkawa (NIM)
- 475) "I think that Kerry may have become withdrawn from the session." - Joanne Sheng (NIM)
- 476) "This guy has tunnel vision. Time for the little guys to strike back." - Jared Lum (NIM)
- 477) "Is that the mediator? When they said, 'justice is blind', I had no idea that's what they meant!" - Curtis J. Crowther (NIM)
- 478) "The mediator tried "See no evil." She tried "Hear no evil." She tried "Speak no evil." Now she's trying "Scratch no evil." - Mike Greenfield (NIM)
- 479) "That's my client. I put a cone on his head because he always talks too much and I'm afraid that once we get into the arbitration, without the cone, he would bite himself in the rear!" - James G. Stewart (NIM)
- 480) "Uh oh. He has tunnel vision. We will never get past this impasse." - Samantha Duff (NIM)
- 489) "We better be careful, I heard he tore the last guy to shreds." – Anonymous (NIM)
- 490) "All the money they paid to those guys to find a solution, and all they could come up with was this? – Anonymous (NIM)
- 491) "At least he keeps his eye on the ball. – Anonymous (NIM)
- 492) "His mediator used the compromising technique, so he got the couch, but he has to wear the cone. – Anonymous (NIM)
- 493) "The cone helps him listen to both sides better without seeing how much he could have made by litigating this." – Anonymous (NIM)
- 494) "I don't know what all his demands are, but my guess is getting that thing off his head is one of them!" - Michael J. Timpane (NIM)

Glossary and ADR Terms of Art

Active listening – Active listening is a communication technique, strongly suggested for use in negotiation and mediation, where the active listener concentrates on the speaker to understand and usually verbally responds back to the speaker with some statement that sums up what the speaker has said, feels, or both. Sometimes active listening is called paraphrasing or summarizing. Active listening can focus on either the content, the feelings, or both. Along with the process of asking questions, active listening is usually considered one of the fundamental communication skills of mediation and negotiation. See, Barkai & Fine, "Empathy Training for Lawyers and Law Students," 13 Southwestern Univ. L. Rev., 505 (1983); Barkai, "How to Develop the Skill of Active Listening," 30 Practical Lawyer (June 1984); and Barkai, "Active Listening," 20 Trial 66 (August 1984). To see how I teach active listening, see, Barkai, "Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil," 75 Nebraska Law Review 704 (1996).

ADR - making a living in the ADR field – Many lawyers, especially those who refers to themselves as "retired" lawyers, would like to get paid do more mediation. Many people mediate, but very few can make a living at it. At many ADR workshops, some of the most popular sessions are about making a living doing mediation.

ADR (alternative dispute resolution) - Alternative Dispute Resolution(ADR) is a general description for a number of processes to resolve disputes without having a trial in court. Some people include negotiation as part of ADR; others would say negotiation is separate. The two most common ADR processes are mediation and arbitration. Some people think ADR should mean Appropriate Dispute Resolution. I am staying out of that dispute.

Arbitration - a third-party ADR process where the arbitrator typically makes a final and binding decision, which means there is generally no appeal allowed. In the American legal system there are a few opportunities to challenge an arbitration decision and they are quite limited. You should assume that any form of traditional arbitration is final and binding. England, and other former Commonwealth countries sometimes allow some limited appeals in arbitration. U.S. courts also allow for some appeals of arbitrations. There are many new forms of arbitration, including court annexed arbitration, baseball arbitration, night baseball arbitration, and Med-Arb (which starts with mediation but if there is no resolution, the mediator takes on the role of an arbitrator and decides the case). Although China and a few other Asian countries to allow for med-arb, that process is not favored by American ADR providers because of the belief that if parties in mediation know that the mediator might later decide their dispute as an arbitrator, the parties will be less forthcoming with the mediator and make reaching a mediated solution more difficult. See, Barkai & Kassebaum, Using Court-Annexed Arbitration to Reduce Litigant Costs and to Increase the Pace of Litigation," 16 Pep. L. Rev. 43 (1989); Barkai & Kassebaum, The Impact of Discovery Limitations on Pace, Cost and Satisfaction in Court Annexed Arbitration, 11 U. Haw. L. Rev. 81 (1989); Barkai & Kassebaum, Hawaii's Court-Annexed Arbitration Program: The Final Report, 1992, 16 Hiroshima L. J. 157 (1992) and 16 Hiroshima L. J. 285 (1993).

Arbitration - number of arbitrators - you will always find one or three arbitrators conducting the arbitration hearing. Just like appellate courts, arbitration panels have an odd number of arbitrators to prevent ties in decision-making.

Barkai chorus – A method of teaching ADR communication skills by having class members read types of questions, phrases, or active listening statements out loud in class, reading them from a PowerPoint slide or paper. I have found this simple, rote learning method to be very effective with both native and non-native speakers of English. To learn more about this teaching methodology see, Barkai, "Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil," 75 Nebraska Law Review 704 (1996).

BATNA (Best alternative to a negotiated agreement) – BATNA is your "plan B," what you are going to do if you were not able to negotiate a solution. The concept of the BATNA was developed in the book *Getting To Yes*.

Bone of contention - an unsettled issue in a negotiation.

Boulwarism - Lemuel Boulware, a former General Electric Vice President was known to use a particular negotiation strategy which later became known as Boulwarism. With this negotiation strategy, the first offer is the only offer ever made. No concessions are ever made. Because this “take it or leave it” offer can undermine union leadership when used by an employer in collective bargaining labor negotiations, the National Labor Relations Board found Boulwarism to be an unfair labor practice and a violation of the Wagner Act and the National Labor Relations Act. It is considered a breach of the duty to bargain in good faith.

Bozo the clown - Bozo was a clown figure that began in the early 1940s and continues to be part of mainstream culture. Being a clown, Bozo was usually funny. Today the term "Bozo" is used to refer to an incompetent person.

Bottom line - The bottom line is the position at which the negotiator will walk away from the negotiation. It is also known as a reservation price. It is the lowest (or highest) number to which the negotiator will move during the concession phase of the negotiation. Offers which do not reach the opponent’s bottom line will often lead to impasse.

Brainstorming - a problem-solving technique used to generate new ideas to solve a problem. During the brainstorming it is usually not permitted to criticize any of the ideas that are generated. Brainstorming is a key aspect of the *Getting To Yes* approach to negotiations and is represented by the idea to "invent options for mutual gain."

Communication principles -Negotiation and mediation are usually considered to be more effective when good communication principles are applied. The most commonly taught communication skills for ADR include open-ended questions, active listening, and reframing.

Confidentiality - Confidentiality is an important part of the mediation process. Statements made in mediation are considered to be confidential. Usually this means that the mediator will not testify in future proceedings if the solution is not reached. When mediators meet with only one party in a private meeting (caucus), mediators consider what is said by one party to be confidential and will not reveal the communication unless that party decides they do not want or need confidentiality. However, whether a statement may be used in a later court proceeding if the settlement efforts fail, will depend on how the court rules. Although many mediators are fond of saying to parties to a mediation that “All statements will be confidential,” it is hard to enforce confidentiality. Nonetheless, assuming and presuming confidentiality is a good practice. Just be careful. A mediator may be making a promise that they cannot keep (if a judge later says otherwise).

Court ordered mediation – The court (a judge) orders the parties to try mediation before proceeding further with the judicial process. Of course, a judge can only order the parties to appear at a mediation (and to perform in good faith in an attempt to reach a settlement). A judge cannot order a party to reach an agreement in mediation. See mandatory mediation.

Distributive negotiations – In distributive bargaining, the parties think of the items being negotiated as fixed and limited. Each party tries to get the most for themselves. The parties “distribute” the total gain available. Usually there is just one issue for negotiation, and more for me means less for you. Usually that one issue is money.

Drop-dead proposals – a proposal said to be the last proposal, with no further proposals (or offers) coming if that proposal is not accepted by the other side. If this offer is not accepted, the negotiation or mediation is “dead.” This is the same as a “final offer.”

Evaluative – A style of mediation in which the mediator challenges a party’s position, offer opinions, or suggests who might win and what the judgment might be if the case needs to be decided by a judge in court. An evaluative style of mediation is seldom seen in community mediation. It is most often a style of mediation seen in “lawyer” mediation where the parties are represented by lawyers, the mediator is a lawyer, and the dispute is already filed in court. As impasse becomes more likely, the mediator might become more evaluative. A mediator’s evaluative comment or proposal is intended to get a concession from one of both parties. Professor Leonard Riskin first characterized mediator styles as “facilitative” and “evaluative” more than 25 years ago. See, Leonard L. Riskin, *Mediator Orientations, Strategies and Techniques*, 12 *Alternatives To High Cost of Litigation* 111 (1994). He also used the terms of “broad” and “narrow” to characterize a mediator’s approach to problem solving. He combined all four of those terms in what is famously called “The Riskin Grid.” Riskin later revised his grid approach in his article, *Understanding Mediator Orientations, Strategies, And Techniques: A Grid for The Perplexed*, 1 *Harvard Negotiation Law Review* 7 (1996). Still later, Riskin revised his grid once again, which he himself now called the “New New Grid.” See Leonard Riskin, “Decisionmaking in Mediation: The New Old Grid and the New New Grid System,” 79 *Notre Dame Law Review* 1 (2003). However, many mediators and trainer still refer to the terms first used in the original grid. I do.

Expand the pie – A term of art often associated with Getting To Yes principles, which refers to seemingly expanding the resources so that both parties in a dispute can get more than if they used distributive negotiations. The dispute over a single orange by two sisters, or the Ugli Orange simulation, is a perfect example of the expanding-the-pie possibilities.

Exxon settlement – refers to the \$500 million settlement in a legal case resulting from the 1989 oil spill from the Exxon Valdez oil tanker in Prince William Sound, Alaska. Cleaning up the oil spill cost \$2.5 billion.

Facilitative – a style of mediation in which the mediator does not evaluate the parties’ presentations and does not make suggestions as to who would win in the case went to court. The style of mediation most associated with community mediation. There is a continuing debate within the mediation community as to which style of mediation – facilitative or evaluative - should be used. Most often the facilitative style is used in community mediation where lawyers do not represent that parties. On other hand, the mediation of big legal cases, with lawyers on both sides, often use evaluative mediation after a facilitative style does not work. Professor Leonard Riskin first characterized mediator styles as “facilitative” and “evaluative” more than 25 years ago. See, Leonard L. Riskin, *Mediator Orientations, Strategies and Techniques*, 12 *Alternatives To High Cost of Litigation* 111 (1994). He also used the terms of “broad” and “narrow” to characterize a mediator’s approach to problem solving. He combined all four of those terms in what is famously called “The Riskin Grid.” Riskin later revised his grid approach in his article, *Understanding Mediator Orientations, Strategies, And Techniques: A Grid for The Perplexed*, 1 *Harvard Negotiation Law Review* 7 (1996). Still later, Riskin revised his grid once again, which he himself now called the “New New Grid.” See Leonard Riskin, “Decisionmaking in Mediation: The New Old Grid and the New New Grid System,” 79 *Notre Dame Law Review* 1 (2003). However, many mediators and training still refer to the terms first used in the original grid.

Final offer – An offer claimed to be the last offer by a party. The idea is that if this “last” offer is not accepted, there will be no further offers coming and the negotiation will end in impasse. "This is my final offer. This is it. Accept it, or the negotiation or mediation is over." Same as a “drop dead” proposal.

Fishing expedition / discovery – A concern that a party in mediation is not serious about reaching a solution during the mediation and is using the mediation to “fish” for information instead of doing pretrial discovery. They expect to use the discovered information at trial. They are also fishing for information and an advantage.

Gambit - In addition to being an opening move in the game of chess, the term gambit is also the use to refer to a phrase, sentence, or question intended to start a conversation. Non-native speakers of English are often given a series of gambits to help them learn how to talk to native English speakers. I use the term gambit in my teaching to refer to phrases which a negotiator or mediator could use to begin certain parts of a negotiation or mediation. “Tell me how you see the problem” and “What do you think they are actually looking for?” are both gambits. For how I use gambits in my teaching, see Barkai, "Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil," 75 Nebraska Law Review 704 (1996).

Gap – the difference between two parties’ position at any time during a negotiation or mediation. Eventually, the parties will need to “close the gap.”

Getting To Yes principles - the book Getting To Yes, by Roger Fisher, William Ury, and Bruce Patton, now in its third edition has been the "Bible" for cooperatives, principled negotiations for almost 40 years. The five most important principles from this book are 1) separate the people from the problem, 2) focus on interests, not positions, 3) invent options for mutual gain, 4) insist on using objective criteria, and 5) develop and apply a BATNA.

Good-cop bad-cop - the history of this negotiation tactic comes from a situation of two police officers trying to get a confession from a person accused of a crime. The first cop acts real tough, suggesting the arrested person will go to prison for many years if he does not cooperate and confess. Then a softer, usually younger, person continues the interrogation. The belief is that the prisoner is more likely to confess to the new, nicer person. The belief is that the prisoner will be so relieved that they are finally working with a good guy that they will let their guard down and accept settlement terms more favorable to the other side.

Ground rules - procedures that govern the process. The rules of the game. There are few ground rules in mediation, most often it is simply, “Please do not interrupt the other speaker while they’re talking.”

Humor - Humor can be effective in ADR. Some mediators use of humor to both build a relationship, relax parties, and improving changing a tense atmosphere. I have even shown some cartoons in mediation.

Ice breaker – anything which can be used to start an awkward social situation and begin a conversation. Similar to a gambit.

Impasse – a situation in which no further progress can be made. The term is used in negotiation and mediation to suggest the place where the negotiation or mediation process appears to have come to an end, and there will be no additional movement. Popular negotiation and mediation training topics often focus on how to break the impasse.

Integrative negotiations - During integrative bargaining, the parties are working together to increase the amount of resources and to maximize mutual gain. Integrative bargaining requires two or more issues so that trades can be made. Creating the additional resources is sometimes referred to as "expanding the pie." Some would call this "Win-Win" negotiating. The theory is that the parties have different interests which can be integrated (reconciled) to create joint gains. Joint gains are an improvement for all parties to a negotiation.

Invent options for mutual gain – This negotiation move is one of the principles of Getting To Yes. First, create (brainstorm) a list of possible options to resolve the conflict. Then see how they might meet the interests of both sides. Finally, see that all party’s’ interests are met and the ultimate options selected will be beneficial to all the parties involved.

List of arbitrators - when using arbitration, the parties have to select an arbitrator unless the arbitrator is provided by the organization administering the arbitration, such as the JAMS or the American Arbitration Association. Most organizations provide the parties with a list of arbitrators, and parties usually have the ability to reject some of the proposed arbitrators on the list.

Mandatory mediation - Sometimes using mediation is mandatory because the disputing parties have a contract which requires them to use mediation to resolve disputes or because the parties are engaged in litigation and the judge has ordered them to attempt to solve their disputes through mediation. Even if this mediation is mandatory, it is only mandatory in the sense that the parties must use mediation in good faith, but it certainly does not require them to reach a solution during mediation.

MBTI (Myers-Briggs Type Indicator) – a questionnaire designed to measure psychological preferences in how people see the world and make decisions. These preferences were derived from the psychological theories proposed by Carl Gustav Jung and first published in his 1921 book *Psychological Types* (English edition, 1923). Jung theorized that there are four principal psychological functions by which we experience the world: sensation, intuition, feeling, and thinking. One of these four functions is dominant most of the time. The original developers of the personality inventory were Katharine Cook Briggs and her daughter, Isabel Briggs Myers, hence the name Myers-Briggs Type Indicator. Myers and Briggs added additional functions to the indicator – introversion, extraversion, judging and perceiving.

Mediation - Mediation is the main form of ADR and can take many different approaches. A third party (a person not involved in the dispute) can assist others in reaching a solution. The mediator has no power to decide the dispute, although under some forms of mediation (evaluative), the mediator can make a proposal. However, no mediator's proposal is binding on the parties. Stated another way, a mediator has no power to resolve the issue in dispute by making a decision.

Mediation advocacy - mediation advocacy is the process of representing a party to a dispute in a mediation. In the past two decades, mediation advocacy training and classes in law schools have become very popular. The most popular texts on mediation advocacy and the ones that most influence me are authored by Hal Abramson and Dwight Golann. Eric Galton also had an early important text on the subject.

Meet halfway – a common phrase to suggest a compromise, especially after a series of bargaining exchanges. It is often a tactic used to close the final remaining gap between the two sides. The same as “split the difference.”

Mirroring (as rapport building) – A method of establishing and maintaining rapport by mimicking another person's body posture, and sometimes voice. In rapport, the two people will look like they are a reflected image in a mirror. In addition to mirroring body posture, a person can be mirrored by copying their language, attitude, and other aspects of behavior. See a discussion of mirroring as an aspect of NLP (Neuro-Linguistic Programming) as described originally by Bandler and Grinder in *Frogs Into Princes*, 1978. See, Barkai, "Sensory Based Language in Legal Communication, 27 *Practical Lawyer* No. 1, 41 (1981), and Barkai, "A New Model for Legal Communication: Sensory Experience and Representational Systems," 29 *Cleveland St. L. Rev.* 575 (1980).

ODR (online dispute resolution) – ODR refers to any form of dispute resolution done using email or the internet. Mediate.com has a special search section to allow site users to search for online mediators and online arbitrators. About 30 years ago, I had my students do negotiations by email, see, Barkai, "Electronic Negotiation: The International Electronic Mail Computer Negotiation Project," 11 *Interspectives* 71 (1992).

Online mediation – Online Dispute Resolution (ODR) – ODR is a branch of ADR where technology is used to help in the negotiation or resolve the dispute. Not all of the ADR process has to be done online. Most commonly ODR uses the internet (email, instant messaging, video chats to resolve the dispute. ODR

has always been a lesser, yet still important form of mediation, which has shot to the forefront during the Coronavirus Pandemic.

Offers - Opening offers – The first offers from both sides during a negotiation. One of the biggest issues for negotiators is whether to make the first offer or to try to get the other side to make the first offer. Although most people prefer to have the other side make the first offer, research and experience suggest that making the first offer can often be an advantage.

Panel of mediator or arbitrators - Panels of ADR practitioners are lists or rosters of the people who are willing to do mediation or arbitration work under the umbrella of the ADR provider organization or court system. Commonly the organization will provide some administrative assistance to the dispute resolution process and will receive some part or percentage of the fee charge for the ADR services. Various providers may have certain minimum requirements for anyone who wants to be on their panel

Pareto principle and super optimal solutions. Also, called pareto optimal solutions. Economist Vilfredo Pareto observation most relevant to negotiated and mediated solutions is that many solutions that help some people may hurt others. (Nothing surprising there.) He was interested in finding what are referred to as Pareto optimal solutions which would be solutions that help some people without hurting anyone else. They look nice as a diagram, looking like a quarter of a circle. The idea is to get the solution on the X and Y axis out to the outer edge of the circle so that it equally benefits Mr. X and Ms. Y. (If you cannot picture that, just Google it.) Pareto is also well known for his observation that there is usually an unequal relationship between inputs and outputs and often described as the 80/20 rule suggesting that 80% of the consequences come from 20% of the causes.

Positions v. interests - Positions are "what" the negotiators say they want. They are really solutions which have been proposed by the negotiators. Interests are "why" the negotiators want the positions they take. Interests lie behind the positions of the negotiators. Interests represent the basic needs to be met.

Proposals – An offer made during a negotiation.

Red herring - A red herring is something, often a clue, that is intended to be misleading or distracting. A red herring piece of information takes your attention away from the main problem. The term was supposedly popularized by English journalist William Cobbett who claimed more than 200 years ago that as a boy he used a red herring (a cured and salted dead fish) to mislead dogs following a trail by scent. A purposeful diversion.

Renegotiate – Similar to revisiting issues. Returning to renegotiate to an issue after it had already once been negotiated.

Revisit issues means returning to the settled terms of one of more previously negotiated issues after that issue had already be resolved. Some negotiators consider revisiting to be inappropriate, although it is a common international negotiation tactic. It is often a smart strategy if there is a wide gap on the last remaining issue of a multi-issue negotiation. Going back to revisit (and renegotiate) previously resolved issues makes good sense if it can lead to a final settlement on all the issues.

Riskin Grid – A theoretical framework based upon an image similar to an X and Y axis graph created by pioneering ADR Law Professor Leonard Riskin and used to explain styles of mediation. In Professor Riskin's own words it is a "[S]ystem for understanding mediators' orientations, strategies and techniques. The system employed a grid composed of two continuums. One measured the role of the mediator; the terms evaluative and facilitative were its anchors. The other continuum had to do with the mediator's approach to problem definition, and it ran from narrow to broad. When ... put ...together, a grid appeared ...[which] showed mediator orientations: Evaluative/Narrow, Facilitative/Narrow, Evaluative/Broad and Facilitative/Broad. This system of understanding mediators' approaches has been used widely in training, evaluating, regulating and choosing mediators." Leonard L. Riskin, Who Decides What? Rethinking the Grid of Mediator Orientations, 9 No. 2 Dispute Resolution Magazine 22, 22 (Winter 2003).

Selection of mediators – The process of deciding who will mediate a conflict. Often an administrative organization, such as JAMS or AAA, or a court mediation program, will offer parties several alternative choices of people who are able and willing to serve as a mediator in a particular conflict.

Separate the people from the problem – One of the key principles of negotiation from the book *Getting To Yes*. Various components including keeping emotions in check, and focusing on good communication for conflict resolution. You can be hard on the problem, but you do not have to be hard on the people.

Settlement – an agreement ending a dispute.

Settlement authority - The power or ability to authorize a settlement to a legal claim. Lawyers sometimes say they have “settlement authority” from their client to accept or reject a settlement proposal. Ultimately, the client has the final decision making power.

Split the baby - when a decision-maker, especially an arbitrator, decides that a fair resolution is somewhere near the middle of the negotiators posing demands it is sometimes described as "splitting the baby." When King Solomon acted as an arbitrator, his alleged proposal to split the baby gave him an insight as to how to reach a fair solution without a compromise. Although the phrase “splitting the baby” is often a negative critique of the arbitration process, if advocates in mediation or a negotiation are negotiating effectively a mediator’s proposal and often an arbitrator’s award, will usually be somewhere between the opposing offers on the table. It would be a poor lawyer who asked the arbitrator for what the lawyer thought was a fair award and later finds out that the arbitrator thought a fair award was even better for the party than what their lawyer had asked for. That sounds more like an indication of lawyer malpractice rather than a valid critique of the arbitration process.

Styles of mediation - the most common styles of mediation are facilitated, evaluative, and transformational. There are also additional styles narrative referred to as narrative, directive, muscle, manipulative, and other such styles.

Systems perspective: to look at a problem from a wider context, looking at the whole picture and not just a single element.

Transformational - transformational refers to a style of mediation popularized by Baruch Bush and Joseph Folger in their book *The Promise of Mediation* (1994). Transformational mediation is much less concerned with getting a resolution of the immediate problem that is more focused on the empowerment and mutual recognition of the parties. Although this form of mediation has many proponents and supporters, I believe that this style of mediation is used far, far less often than the more prominent styles of facilitative and evaluative mediation. However, transformative mediation has been adapted as the style of mediation use internally by the United States Postal Service for their employee mediation program.

Trust - trust is an important topic in negotiation and mediation. Mediators talk about gaining the trust of the parties. There are many viewpoints on how one gains, builds, and maintains trust in a dispute. It is much more difficult to teach how to build trust than it how to identify positions and interests.

Vanishing trial - “The Vanishing Trial” is term developed by Professor Marc Galanter as he statistically demonstrated that in the federal courts, over a period of 40 years (1962-2002), federal civil filings increased “by a factor of five” (going from approximately 50,000 to 258,000), while the absolute number of trials decreased 20%. For more statistics and analysis on this point, see, John Barkai and Elizabeth Kent, *Let’s Stop Spreading Rumors About Settlement and Litigation: A Comparative Study of Settlement and Litigation in Hawaii Courts*, 29 *Ohio St. J. on Disp. Resol.* 85 (2014)

Walk the talk - to do what someone talks about. To "walk the talk" means the person does what they say they're going to do consistent with their expressed philosophy and opinions.

WATNA (Worse alternative to a negotiated agreement) – WATNA is your worst alternative. Many people have learned to focus on their BATNA (best alternative) and look towards a positive alternative, perhaps hoping to win in court. They might not focus on the worst that could happen to them, such as losing in court. Perhaps they should even consider a CATNA, meaning the court (verdict or decision) alternative to a negotiated settlement.

Win-Win solution – A result in which all parties “win” or at least get something they want. The parties obtain some or all of the “interests.” Part of “win-win” refers to the resulting solution and part sometimes refers to the attitude and bargaining style of the negotiators.

How to Present a Cartoon in Class or Training

When I use a cartoon in a PowerPoint presentation, I usually present it by using two slides. The first slide is just the cartoon without a caption. I describe the cartoon even when my audience is looking at it. I think a cartoon draws grabs people's attention and helps them understand what is going on in the cartoon. Second, I switch to a new slide or animate the first one, which now adds the caption to the cartoon. I read the caption out loud. By reading it out loud, I get to add volume, tone and inflection, which I hope improves the delivery of the humor point. Too frequently, I have watched people use a cartoon without giving any description what is in the cartoon and not reading the caption. Some in the audience may be visually challenged, more often people sitting in the back rows of larger classrooms cannot see the cartoon or the caption very well, or they simply are not paying attention as I start showing the cartoon.

How to Use Cartoon Captioning Questions on Exams

When I first started using cartoons on exams, the students did not see the cartoon until exam day when they were allowed to start the exam. I got a lot of great captions, but realized I was at I was adding greater pressure to the students taking the exam even though for all my captioning contests, "All captions written in English receive full credit" – which means their answers do not count towards their grades. I changed my approach. Now, I pass out the cartoons well in advance of the exam, usually a week or more before the final exam, so students can look at and think about the cartoons while they are studying for the exam. Advance notice of the cartoons improves the quality of captions, and takes a lot of pressure off the students. I suggest that while they are studying for exams, they should write down a few captions. They are allowed to bring their list of captions into the exam room on a single sheet of paper, printout of an exam page with the cartoons which I give them in advance. (See an example of such my exam cartoon page in a few pages from here.) Students can simply put the sheet of paper with their captions into their exam envelope. It takes them almost no time during the exam.

Initially, I just wanted to see what kind of captions I could get from the students. I soon realized that I really enjoyed reading many of the captions, although many others were not funny at all to me, and still others were not printable or repeatable in polite company.

I found many of the captions original, insightful, and sophisticated, and soon realized they would make great teaching materials for future classes. So initially, it was just for fun. Later, pre-internet, I just posted the better captions on the bulletin board around the law school. The next development was to email students a list of the better captions sometime after the final exam. I used to present the cartoons and captions on overhead transparencies. I remember lugging heavy boxes of transparencies to Japan, Hungary, and Australia for week-long, intensive workshops I taught. Now, of course, I just carry the electrons for my PowerPoint presentations on a jump drive or pull them down from The Cloud.

Of course it is a good idea to have the exam reader (me) in a happy mood. Early in the semester when I explain the exam content, I tell students that I do not read anyone's captions just before or after I read their exam answer. I read all Question # 1 answers, then move on to Question #2, etc.

There is an academic benefit to using cartoon captioning on exams, especially when students are given the cartoons in advance of the exam. The process of coming up with captions while studying for the exam makes the subject matter less intimidating and allows the students to make better connections with the intricacies of the material. Captioning helps students to see the subject material from a different perspective, which reinforces their learning.

But now I just send out copies email sometime in exam. I also send the cartoons and captions to people who have been guest speakers in my class as part of thanking them. Of course, I also I use them in future classes for other teaching materials.

In my early years of using captioning contests I only used one cartoon per exam, but now I usually include four cartoons for the students to caption. It increases my chances of getting some good captions. They only have to write the caption for one cartoon but many students write multiple captions.

Encouraging You To Try A Cartoon Captioning Contest In Any Of Your Classes

What is so funny about the course you teach? Actually, your students will tell you if you only give them a chance. I encourage you to try a captioning contest during your final exam, as a supplement to your final paper, or as an exercise during any class session. It could also be bonding exercise, or short break, for your students in Zoom breakout rooms.

Writing captions for final examinations is really not as difficult as it might sound, especially since the captions do not have to be created during the exam. I have evolved to giving the students the cartoons by the end of classes or earlier, well before the final exam is given. They have time to think about any captions they will write while they are studying for the exam. In addition, the captions themselves are not really graded. The directions for my caption exam question are, "Write a caption for one or more of the cartoons below based on the class. All captions written in English will receive full credit." So no matter how poor or how great the captions are, the captions will not impact their grade. Because everyone gets full credit, I do not even factor the caption question into the exam scoring. I allow students to bring into the exam room a single sheet of paper with the cartoons and captions they wrote out before coming to the exam. They submit the pre-captioned cartoons with their examination.

There are a number of benefits to using a cartoon captioning exercise for the final exam. If you give your students the cartoon before the exam, the students could study for the exam with the cartoon to be captioned in front of them. Thinking about captions while they study might help them think of the subject and issues in new ways and make lasting connections with the subject matter. It also allows them to "vent" some emotions about the rigors of exam preparation.

A number of the submitted captions are directed at me or about the subject matter of the course, not always in a favorable light, although often with a great amount of humor. It also provides some later entertainment value to the students because I will collect and distribute to the class some of the better captions that were included with the exams. I send the captions sometime after students have received their grades. I never look at the captions a student submitted before I assign points to the student's essay answer, although sometimes I will look to see if some of the better captions come from students with the higher grades. Usually they do not. My conclusion is that humor is not related to subject matter proficiency. I also send the captions to anyone I had as a guest speaker that semester, and I send the cartoons and captions from my evidence final exam to the bar members I serve with on the Hawaii Supreme Court's Standing Committee on Evidence.

Cartoon captioning contests result in humorous cartoon captions that can be incorporated into later classes and presentations. Some of the captions are very unique and not typical of captions you would find in normal cartoons or even the New Yorker Cartoon Captioning Contest. For example, I probably have the only cartoon captions about such topics as the residual exceptions to the hearsay rule, specific evidence cases, arbitrator selection, and direct criticism of Supreme Court Justice Anthony Scalia's evidence opinions on the confrontation clause. In fact, I gave Justice Scalia the cartoons and captions mentioning his opinions when he visited our school many years ago. He thought they were funny – at least that is what he told me.

Some of the cartoons poke fun at me in my class and I think they can be a good form of self-deprecating humor. A theme that has been repeated a few times for in captions for my evidence class using cartoons with two prisoners in a cell, or two prisoners in a prison yard, goes something like, "What a coincidence. My lawyer had Barkai for evidence too!" Or another prisoner caption that puts me in a better light is, "I'll be getting out soon. My new lawyer had Professor Barkai for evidence."

I have found that some of the best cartoon setting for evidence cartoon captions are prisoners, judges, and people meeting in an office – which could be a lawyer meeting with a client or a group of lawyers in a conference.

Another good source for captions is two or more judges on an appellate bench, or two judges walking in the halls of the courthouse. You can find such cartoons by doing an image search in a search engine such as Google.

For my negotiations and ADR course, I'd like to have two, and often three people or animals in many of the cartoons because a group of three is perfect for mediation or arbitration captions because the third person or animal can be seen as a mediator or arbitrator.

I am sure you find some good cartoons for captioning for any class you teach. Just Google cartoons, find a few, and give it a try.

Do you have to be funny to promote laughter in your class? Not really. Cartoons can do that work for you. As a side benefit, your student evaluations might increase.

Humor Across Cultures

My experience has been that humor does not translate well across languages and cultures. When I used cartoon captioning contests in classes with non-native speakers of English, those international businesspeople and students usually submitted "stories" in a paragraph form rather than what I think of as the more traditional, one-line cartoon captions. I used cartoon captioning for several years with international people, and finally just gave it up because I was not getting what I wanted out of it and it was a waste of my time and theirs.

So for international groups, I switched from asking for cartoon captions on exams to asking for proverbs from their countries. In this way, I have collected many such proverbs, and some day that might be yet another self-published book. My exam question for proverbs is:

Question 5. An ADR Proverb (20 percent)

Tell me a negotiation (or communication, or conflict) quotation, proverb, or story from your country. What is the meaning of that proverb? How does it relate to the topics we covered in our course? (If possible, please write the proverb both in English and in your native script – Kanji, Chinese, Thai, etc.). As you have seen in class, I hope to use some of these proverbs in future classes.

International Proverbs For Communication and Conflict Resolution

Maybe someday I might do a book with some of the international proverbs I have collected from my international students. Below is a sampler. When possible, I ask the students to also give me the proverb written in their native language and script. Below is a sampler of a few examples from my prior international student and business participants.

“The go-between wears out a thousand sandals.”

-Japanese proverb

傍目八目 - Okame Hachimoku

The onlookers see more than the players.

-Japanese proverb

当局者迷，旁观者清 - Dang Ju Zhe Mi, Pang Guan Zhe Qing

“The onlookers see more than the players.”

-Chinese proverb

“Do not find fault, find a remedy.”

-- Henry Ford

“紙にも表裏がある” - “Even a sheet of paper has two sides”

-Japanese Proverb

[I love this proverb. Although I found it on the Internet described as a Japanese proverb, I have never met anyone from Japan who has ever heard it before.

Theeyinal sutta pun ullaarum aaraathe naavinaal sutta vadu

“A wound caused by fire does heal, but a wound caused by tongue does not heal”

-Tamil proverb, Tamil Nadu, India

An megai sinañganmo megai dinagimu - “The more you talk the more you lie.”

-Chamorro proverb

Doveryai, no proveryai - “Trust, but verify.”

-Russian proverb

Terlajak perahu boleh diundur, terlajak kata buruk padahnya

“To overshoot with a boat can be reversed,

to over say with words brings bad consequences.”

- Malay proverb

沈黙は金雄弁は銀 - "Speech is silver, silence is golden."

-Japanese proverb

List of Cartoons from the ABA Dispute Resolution Magazine

The ABA Dispute Resolution Cartoon Captioning Contest ran under the title “The Lighter Side,” which was a regular feature of the Dispute Resolution Magazine from 1997 to 2011. The contest was run by Professor John Barkai of the William S. Richardson School of Law, University of Hawaii. The cartoons featured in the contest were created for the ABA and are its property. The talented artists who have created the cartoons were W.B. Park, Jeff Dionise, and Dan Mazanec.

56 cartoons

1997 F	Roman forum – artist W.B. Park
1997 W	Walk the plank
1998 SP	Knives and torch at mediation
1998 SU	Fish in the water cooler – artist Jeff Dionise
1998 F	Man on a ledge
1998 W	Monkey hanging between negotiators
1999 SP	Fish with a scuba tank
1999 SU	Dog sitting opposite a couple
1999 F	Long legs in an elevator
2000 W	Clown facing two lawyers
2000 SP	Space aliens following a lawyer
2000 SU	Cave people with stone tire
2000 F	Gorilla in the subway
2001 W	Three angels on clouds
2001 SP	Worm on a hook talking to fish
2001 SU	Magician sawing a woman in half with rabbit watching
2001 F	Two small dogs chewing a bone while big dog watches
2002 W	Boy presenting flowers at the door
2002 SP	Paddlers going over a waterfall
2002 SU	Mice looking at cheese on a mousetrap
2002 F	Baby in cradle talking to cats
2003 W	Man being shot out of cannon
2003 SP	Pushing different elevator buttons
2003 SU	--- no cartoon
2003 F	Examining ant under microscope
2004 W	Trapeze swingers
2004 SP	Two people under umbrella, one person without an umbrella
2004 SU	Three birds on wires
2004 F	Lawyer approaching St. Peter at the pearly gates
2005 W	Two bears hiding from a hunter
2005 SP	Two frogs looking at a flying bee
2005 SU	Fast snail to the finish line
2005 F	Two big cats at the mouse's door
2006 W	Two pigs looking at a piggy bank
2006 SP	Man buried in the sand up to his neck
2006 SU	Two monkeys on an island
2006 F	Man at door in children's swim gear

2007 W	A banana talking to a pear and an apple – artist Dan Mazanec
2007 SP	Man with a "the end is near" sign
2007 SU	Fish in water cooler
2007 F	Genie on an island
2008 W	Pirates, crab, and chest
2008 SP/SU	Mouse talking to dog and cat
2008 SU	Two men in tribal boiling pot – this cartoon was never published
2008 F	Cave people talking with dinosaur in the background
2009 W	Space walkers and alien in flying saucer
2009 SP	Don Quixote and his sidekick
2009 SU	Man swimming with the sharks
2009 F	Two duelers with the second present
2010 W	Robots at a robot bar
2010 SP	Two birds fight over worm while cat watches
2010 SU	Hatfields and the raccoon
2010 F	Clown waving to clown car
2011 W	Laser dissection by evil man
2011 SP	Bull rider and man in a barrel
2011 SU	Lemonade stand

The following two cartoons, which appear in this book,
did not run in the ABA contest

Dog with cone – (unpublished) This cartoon was created for the ABA contest but did not run in the magazine. However, I used it on my law school ADR final exam and I have captions for it.

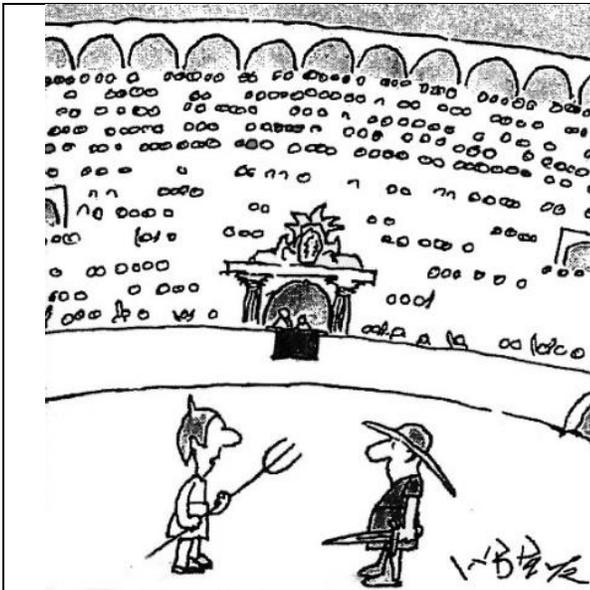
Angles and devils – by artist Dana Fradon, from a 1987 New Yorker Magazine. One of my all-time favorites.

Sample Cartoon Page from a Barkai ADR Exam

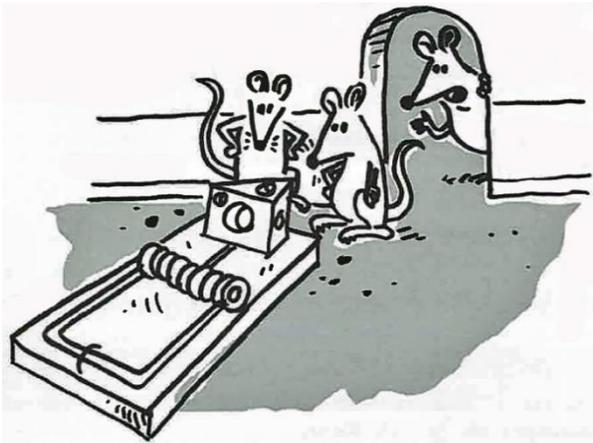
Cartoon Captions - 5 percent

(All captions written in English will receive full credit.)

Write a caption for one (or more) of these cartoons based upon some topic from our class.



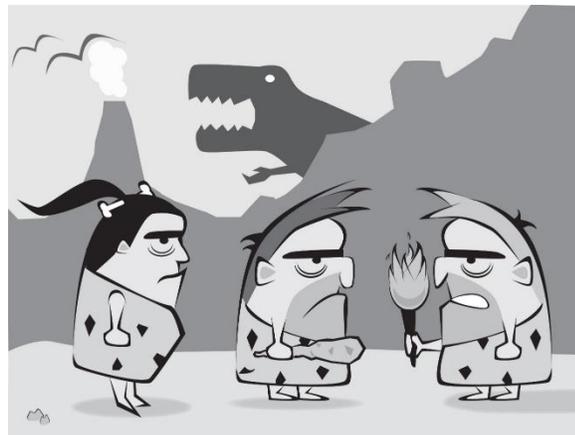
Roman Forum



3 Mice



Boiling Pot



Prehistoric Times

Exam No. _____

ADR Career Highlights

John Barkai

Professor of Law

William S. Richardson School of Law,

University of Hawaii,

2515 Dole Street,

Honolulu, Hawaii 96822

Phone: (808) 956-6546, E-mail: barkai@hawaii.edu

- Professor of Law and Co-Director of the Clinical Programs at the University of Hawaii School of Law since 1978;
- Professor at Wayne State University Law School 1973-1978.
- BBA (1967), MBA (1968) and JD (1971) from the University of Michigan.
- Visiting Senior Scholar, City University of Hong Kong, 1992-93
- "Outstanding Professor of the Year" 2005-06 & 1991-92, William S. Richardson School of Law
- University of Hawaii. Regents' Medal for Excellence in Teaching, 2007
- teaches courses on Alternative Dispute Resolution, Evidence, and Prosecution Clinic at the Law School
- taught Negotiation and ADR courses at Pepperdine, Ohio State, Idaho, and Hamline law schools, as well as Shinshu University (Japan), Central European University (Hungary), Helsinki School of Economics and Business (Finland), and La Trobe Law School (Australia).
- frequently conducts negotiation and ADR trainings in Hawaii and has taught ADR in Australia, Finland, Hong Kong, Hungary, Japan, and the Federated States of Micronesia (Kosrae & Pohnpei)
- made ADR presentations in Canada, England, Japan, Korea, Malaysia, Netherlands, Russia, and Taiwan
- co-author of the teacher's manual for Abramson's Mediation Representation: Advocating as a Problem-Solver in Any Country or Culture (N.I.T.A. 2010).
- taught International Negotiations at the Shidler College of Business in the Japan focused and China focused Executive MBA programs (1985-2007), Intercultural Negotiations at JAIS (Japan American Institute for Management Science (1986-present), and the Asia-Pacific Center for Securities Studies (2010-2014).
- trainer for 7-day Mediation Workshops for 30-50 Judges from the Kingdom of Thailand, Honolulu, 2008, 2010, 2012, 2014
- worked in the field of ADR since 1979 when he was a member of the first group of mediators trained at the Neighborhood Justice Center of Honolulu (now called Mediation Center of the Pacific)
- mediated cases for the Neighborhood Justice Center, the Hawaii Judiciary's Center for Alternative Dispute Resolution, the State of Hawaii, and private groups
- former chair and co-chair of the Alternative Dispute Resolution (ADR) Section of the Hawaii State Bar Association (for 10 years)
- past president and board member of the Board of Directors of the Neighborhood Justice (Mediation) Center of Honolulu
- founding member (1986) of the University of Hawaii's Program on Conflict Resolution
- ran the "Humor in ADR" Cartoon Captioning contest in the American Bar, Association's Dispute Resolution Magazine, 1997-2011
- served as a consultant to the Hawaii Judiciary, The Judiciary of the Republic of the Marshall Islands, the Supreme Court of the Federated States of Micronesia, the Pacific Judicial Council, and the Minister of Justice for Papua New Guinea
- arbitrates for the Hawaii Court-Annexed Arbitration Program and the Department of Commerce and Consumer Affairs' Lemon Law Program
- former chair of the ADR Section of the Association of American Law Schools
- published numerous articles on the subject of negotiation and mediation (see later list)
- United States representative to APEC ADR in Executive Education Project 2000
- criminal trial lawyer for Legal Aid & Defender Association, Detroit, Michigan 1972 - 1973

John Barkai's ADR Publications

Available at SSRN: <http://ssrn.com/author=47903>

Listed in order of downloads from SSRN.com

1. How to Develop the Skill of Active Listening, *Practical Lawyer*, Vol. 30, No. 4, p. 73, June 1984
2. Nonverbal Communication from the Other Side: Speaking Body Language, *San Diego Law Review*, Vol. 27, p. 101, 1990
3. Cultural Dimension Interests, the Dance of Negotiation, and Weather Forecasting: A Perspective on Cross-Cultural Negotiation and Dispute Resolution, *Pepperdine Dispute Resolution Law Journal*, Vol. 8, No. 3, 2008
4. Empathy Training for Lawyers and Law Students, *Southwestern University Law Review*, Vol. 13, pp. 505-529, 1983
5. What's a Cross-Cultural Mediator to Do? A Low-Context Solution for a High-Context Problem, *Cardozo Journal of Conflict Resolution*, Vol. 10, pp. 43-89, 2008
6. Using Alternative Dispute Resolution Techniques in Construction Disputes, *Papers from the 3rd International Symposium on Infrastructure Management and Financing*, Kyoto University, Kyoto Japan, 2003
7. Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil
Nebraska Law Review, Vol. 75, p. 704, 1996
8. Mediation of Construction Disputes in the United States, 17 pages, 24 Jul 2009,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1435380
9. Active Listening, *Trial*, Vol. 20, p. 66, August 1984
10. What Happens When Mediation is Institutionalized? *Ohio State Journal on Dispute Resolution*, Vol. 9, No. 307, 1994, with James J. Alfini, Robert A. Baruch Bush, Michele Hermann, Jonathan M. Hyman, Kimberlee K. Kovach, Carol Bensinger Liebman, Sharon Press and Leonard L. Riskin
11. Nonverbal Communication from the Other Side: Speaking Body Language, *Journal of Law, Politics, & Sociology*, Vol. 66, p. 100, 1993, with Akira Ishikawa
12. Let's Stop Spreading Rumors About Settlement and Litigation: A Comparative Study of Settlement and Litigation in Hawaii Courts, *Ohio State Journal on Dispute Resolution*, Vol. 29, pp. 85-160, 2014, with Elizabeth Kent
13. Sensory Based Language in Legal Communication, *Practical Lawyer*, Vol. 27, No. 41, January 1981
14. Using Court-Annexed Arbitration to Reduce Litigant Costs and to Increase the Pace of Litigation, *Pepperdine Law Review*, Vol. 16, pp. 43-74, 1989, with Gene Kassebaum

15. Applying the Hawaiian Mediation Model to Disputes and Conflicts, *Interspectives*, Vol. 11, No. 40, 1992
16. Hawaii's Court-Annexed Arbitration Program: Final Evaluation Report
University of Hawaii at Manoa, Program on Conflict Resolution, PCR Working Paper Series 1992-1
17. The Education and Training of Mediators, The Fifth International Conference on Multi-National Joint Ventures for Construction Works 2009
18. A New Model for Legal Communication: Sensory Experience and Representational Systems, *Cleveland State Law Review*, Vol. 29, p. 575, 1980
19. Settling Civil Lawsuits in the Hawaii Circuit Courts, *Hawaii Bar Journal*, Vol. 10, No. 13, 2007, with Elizabeth Kent and Pamela Martin
20. A Profile of Settlement, *Court Review*, Vol. 42, No's. 3-4, Fall/Winter 2006, with Elizabeth Kent and Pamela Martin
21. The Legal Education of Plea Bargaining Participants, *68 Kentucky Law Journal* 240 (1979)
22. Bringing Mediation (Back) to Micronesia, 18 Jul 2009
23. The Lecture-in-Disguise, *New Mexico Law Review*, Vol. 19, pp. 117-136, 1989
24. Using Electronic Mail for International Negotiation Simulations, 23 Jul 2009, with Andrew Clark
25. The Impact of Discovery Limitations on Pace, Cost and Satisfaction in Court Annexed Arbitration, *University of Hawaii Law Review*, Vol. 11, No. 81, 1988, with Gene Kassebaum
26. American Alternative Dispute Resolution: Mediation - An Overview and Mini-Training (in the Japanese Language), *Hiroshima Law Journal*, Vol. 15, p. 157, 1991
27. Investing in Vietnam: An Ancient Land Looks for Modern Money, *Legal Times*, pp. 36-40, June 1994
28. Accuracy Inquiries for All Felony and Misdemeanor Pleas But Innocent Defendants?, *University of Pennsylvania Law Review*, Vol. 126, pp. 88-146, 1977
29. Pushing the Limits on Court-Annexed Arbitration: The Hawaii Experience, *Justice System Journal*, Vol. 14, p. 131, 1991, with Gene Kassebaum
30. Electronic Negotiation: The International Electronic Mail Computer Negotiation Project
31. Hawaii's Court-Annexed Arbitration Program: Is It Worth It? (in Japanese), *Hiroshima Bar Journal*, September 1992
32. The Hardest Case I Never Settled, *13 Hawaii Bar Journal* (Nov. 8) 2009

I have other publications on SSRN and in print
that are not related to negotiation and ADR

Evidence Handbooks by John Barkai

**If you do trials,
you might find one of my evidence handbooks helpful**

American Samoa Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2019)

Arizona Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

California Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

Chuuk Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2019)

Federal Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

Federated States of Micronesia Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2019)

Florida Evidence Code Handbook with Common Objections & Evidentiary Foundations (2020)

Hawaii Rules of Evidence Handbook (2018)

Hawaii Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

Humor in Negotiations & ADR: Cartoon Caption Contest Winners from the ABA Dispute Resolution Magazine (2020)

Humor in Trial Evidence: Cartoon Caption Contest Winners and Challenges from My Evidence Class (2020)

Illinois Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

Kosrae Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2019)

Marshall Islands Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2019)

Michigan Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

Military Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

New Jersey Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

Ohio Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

Pennsylvania Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

(Pennsylvania) Just the Rules: Pennsylvania of Evidence (2020)

The Pocket Guide to Common Trial Objections & Evidentiary Foundations (2020)

Pohnpei Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2019)

Texas Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

(Texas) Just the Rules: Texas of Evidence (2020)

Virginia Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2020)

Yap Rules of Evidence Handbook with Common Objections & Evidentiary Foundations (2019)

All the above books are (or will be shortly) available exclusively on Amazon.com and are “print-on-demand.”

To find Barkai’s evidence handbooks,

1. Go to the Amazon website – www.Amazon.com
2. Change the tab on the left side of the search bar from “All” to “Books,”
3. Enter - Barkai evidence

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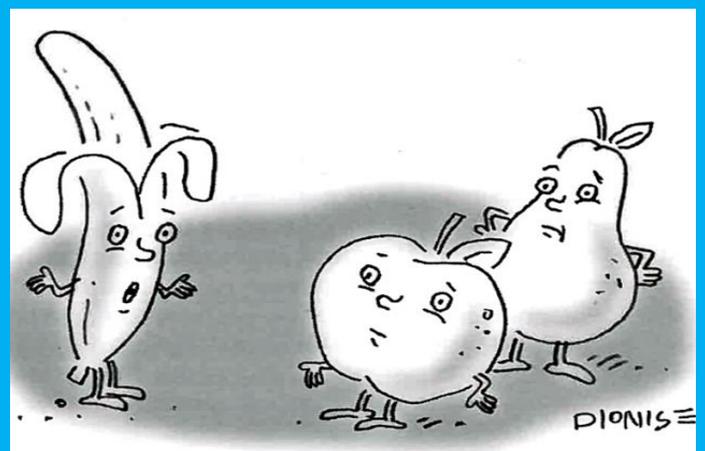
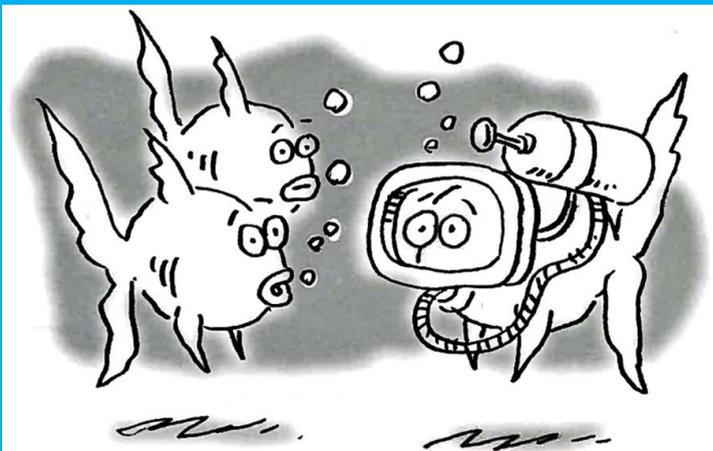
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About the Author

John Barkai has been a full-time law professor for more than 45 years and a mediator for more than 40 years. He teaches negotiation & ADR, evidence, and a criminal clinic at the University of Hawaii School of Law. He has received his University's Excellence in Teaching award and has twice received the Professor of the Year Award at the law school. More information about him and his scholarship appeared on previous pages.



John Barkai

