Aarons, Anthony; Orewyler, Tom. "Unrealized Profits: ADR investors sour on the prospect of making big money." California Lawyer; June, 1999; 19(6): pp. 24-25.
Author discusses NY investment firm's decision to withdraw its stake in JAMS/Endispute - the nation's largest for-profit provider of ADR services. Although JAMS once had a monopoly on the mediation market, its slow adjustment to the changing industry failed to generate the rapid growth its investors were expecting.
{74} SUBJ MATTER: GENERAL

ABA Section on Dispute Resolution. Uniform Acts: mediation and arbitration; 1999; pp. 138.
Cover title. On cover: The American Bar Association Section on Dispute Resolution presents: Breaking Down the Barriers: ADR in the New Millennium. Includes bibliographical references. Uniform Mediation Act: draft for discussion only / National Conference of Commissioners on Uniform State Laws.
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

ABA Section on Dispute Resolution. Securities arbitration and mediation; 1999; pp. 39.
Cover title. On cover: the American Bar Association Section on Dispute Resolution presents: Breaking Down the Barriers: ADR in the New Millennium. Includes bibliographical references. Securities arbitration and mediation 1999: the changing dynamic / by Robert S. Clemente.
{106} SUBJ MATTER: SECURITIES

ABA Section on Dispute Resolution. Managing the complex arbitration; 1999.
Cover title. On cover: The American Bar Association Section on Dispute Resolution presents: Breaking Down the Barriers: ADR in the New Millennium. Includes bibliographical references. Managing the complex mega-arbitration / presenters: Gerald Aksen, Richard Chernick, Lester E. Olson.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

ABA Section on Dispute Resolution. The politics of health care and ADR; 1999; pp. 47.
Cover title. On cover: The American Bar Association Section on Dispute Resolution presents: Breaking Down the Barriers: ADR in the New Millennium. Includes bibliographical references. Health care due process

protocol: a due process protocol for mediation and arbitration of health care disputes / American Arbitration Association, American Bar Association, American Medical Association.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

Ackermann, Matt. "Arbitration Resolves 25 Percent of Auto Cases, 80 Percent of P.I. Claims." New Jersey Law Journal; June, 1999; 156(11): pp. 6.
The author presents results from a report of the New Jersey mandatory arbitration program released by the Administrative Office of the Courts. The author explains the specific numbers contained in the report and discusses the perceived pros and cons of the program.
{127} REQUIREMENTS: MANDATE TO USE
{133} COURT REFORMS TO ACCOMMODATE DISPUTE RESOLUTION PROCESS

Acton, Kenneth W. "The Impact of Mediation on Legal Education and on the Profession." Windsor Yearbook of Access to Justice; Annual, 1999; 17(Annual): pp. 256-260.
Collaborative problem-solving and decision-making are becoming more common. More and more people speak of Appropriate Dispute Resolution and not Alternative Dispute Resolution. This has resulted from the public's concern about the negatives resulting from the adversarial process. To get a greater understanding of the area, law schools are beginning to put more focus on ADR. Continuing legal education is the way to help lawyers who have been practicing for years to adjust to ADR.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{74} SUBJ MATTER: GENERAL

Acton, Kenneth W. "The Impact of Mediation on Legal Education and on the Profession." Windsor Yearbook of Access to Justice; Annual, 1999; 17(1): pp. 256-260.
Legal education and the legal profession have been impacted by the increased use of ADR in Canada. Canadian legal education has traditionally focused upon litigation; attorneys have been taught to seek advantage. A modern review of legal curricula requires a larger focus upon providing education in ADR techniques.
{38} NON-BINDING RECOMMENDATION; PROC - GENERAL; PROC - EARLY NEUTRAL EVAL
{133} COURT REFORMS TO ACCOMMODATE DISPUTE RESOLUTION PROCESS

Ahdab, 'Abd al-Hamid. Arbitration with the Arab countries (2d); 1999; pp. 985.
Author addresses issues of arbitration with the Arab countries, including Islamic Law and issuance and enforcement of awards.

{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L

Alvarez, Henri C. "Recent Trends in International Commercial Dispute Resolution." The Advocate; September, 1999; 57(5): pp. 691-697.
Article identifies and discusses a number of recent trends and developments in international commercial dispute resolution. They include: the increased recognition of the importance of alternative dispute resolution in international business transactions, the increased use of arbitration in investment treaties and disputes, the significant development of national laws and institutional rules on arbitration, the increased use of mediation and conciliation, particularly in North America, the increased governmental use and support of alternative dispute resolution, and the development of the internet as both a tool for the advancement of alternative dispute resolution and a new source of disputes.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Ameli, Koorosh H. "Reconsidering a Key Tenet of International Commercial Arbitration:Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived? (Comment)." Journal of International Arbitration; March, 1999; 16(1): pp. 101-104.
Ameli discusses procedures that may be preferred over appellate review. For example, the author suggests that annulment of awards is preferable because it allows parties to feel confident about arbitration proceedings. Ameli also proposes that revision mechanisms could be incorporated into arbitration rules and agreements. The article contains a copy of the Permanent Court of Arbitration's draft provisions regarding annulment, revision, and enforcement of awards.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L

American Arbitration Association. American Arbitration Association Dispute Resolution Services Worldwide; 1999.
This introductory text provides general information about the American Arbitration Association (AAA). Topics discussed within the book include a general summation of the AAA's duties and scope; a membership listing; areas upon which the AAA focuses; rules and procedures, including the Association's laws; a roster of neutrals; a discussion of the AAA's involvement in educational research; a listing of publications sponsored or produced by the AAA, and contact information.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{74} SUBJ MATTER: GENERAL

{92} SUBJ MATTER: INT'L

American Arbitration Association. Commercial Dispute Resolution Procedures: Including Mediation and Arbitration Rules; 1999; pp. 48.
Publication contains the rules and procedures of the American Arbitration Association for commercial mediation and arbitration. It includes commercial mediation rules, commercial arbitration rules, expedited procedures, optional procedures for large, complex commercial disputes, and optional rules for emergency measures of protection.
{76} SUBJ MATTER: COMMERCIAL
{146} ORGANIZATION POLICIES AND RULES

Anthony, George L. "Labor and Employment Review: Controlling Legal Costs in Labor Arbitration." The Colorado Lawyer; June, 1999; 28(6): pp. 75.
Minimizing litigation costs is the name of the game in our competitive global economy. One essential element to keep litigation costs at a minimum is to control arbitration costs. The key to minimizing arbitration costs lies with creative staffing and careful budgeting. Creative staffing for labor Arbitration Cases can be accomplished through standardization and minimal delegation. This means creating a standardized litigation plan to be followed for a typical case and identify the least costly person who is capable of performing each task. Once the creative staffing is in place attention turns to careful budgeting. Careful budgeting for Labor Arbitration Cases means concentration on two principles: 1) Budgeting for Legal fees, and; 2) Budgeting expenses.
{136} ECONOMIC ADVANTAGES OF ADR

Ashman, Vivienne. "UNCITRAL: Issues in International Commercail Arbitration." New York Law Journal; September, 1999; 222(46): pp. 3-7.
The United Nations Commission on International Trade Law (UNCITRAL) recently met and set four initiatives for future work: (1) concilliation; (2) requirement of written form for arbitration agreements; (3) enforceability of interm measures of protection; and (4) possible enforceability of an award that had been set aside in the State of orgin. Each initiative is briefly explained and how it contributes to the development of a unified legal framework
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Ashman, Vivienne M. "UNCITRAL: Evolving Isssues in International Commercial Arbitration." New York Law Journal; September, 1999; 222(48): pp. 3.

The United Nations Commission on International Trade Law will establish a Working Group and request Secretariat to undertake certain studies. The Working Group agrees to give high priority to the issues of: (1) conciliation; (2) requirement of written form for the arbitration agreement; (3) enforceability of interim measures of protection; and (4) possible enforceability of an award that had been set aside in the state of origin. This article draws extensively from the note by the Secretariat and the decisions of the Commission to review these four issues.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L
{76} SUBJ MATTER: COMMERCIAL

Beehler, John. "IRS Alternative Dispute Resolution Initiatives." The Tax Adviser; February, 2000; 31(2): pp. 116.
In a move toward earlier resolution of taxpayer disputes, the IRS is employing new dispute resolution efforts. The available ADR procedures can be categorized by when in the tax return process they come into play: pre-filing, audit & Appeals, and litigation ADR procedures. These efforts have shown much potential, and are in large part a result of the mandates of the IRS Restructuring and Reform Act of 1998 which mandated the expansion of ADR availability to taxpayers.
{108} SUBJ MATTER: TAX
{127} REQUIREMENTS: MANDATE TO USE

Bennett, Steven. "Court-Ordered Alternative Dispute Promises and Pitfalls." Washington State Bar News; February, 2000; 54(2): pp. 32-39.
This article reviews some of the pitfalls of modern ADR--introducing the practitioner to the key issues involved in court-ordered ADR. Issues to consider are whether ADR actually reduces the cost of resolution as compared to litigation and the court's permissible involvement in ADR. A checklist for attorneys faced with court-ordered ADR: know the local rules, potential benefits, who pays, total costs, how the official is selected, is ADR likely to be successful for this dispute, and the possibility of opting out of ADR.
{21} MED: RELATED PROCESSES-GENERAL

Bennett, Steven C. "Court-Ordered ADR: Promises and Pitfalls." Pennsylvania Bar Association Quarterly; January, 2000; 71(1): pp. 23-28.
Court-ordered ADR processes are becoming more popular. This article suggests some of the limitations, burdens, and benefits inherent in court-sponsored ADR programs. The author provides a useful checklist for considering the advantages and disadvantages of court-ordered ADR.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

Berkman, Jeffrey W. & Morreale, Frank E. "Due Process and Foreign Arbitral." New York Law Journal; February, 2000; 223(34): pp. s3.
While access to the arbitration procedures of the International Chamber of Commerce (ICC) and the existence of multilateral treaties have helped to simplify the resolution of international commercial disputes, questions still arise. One that recently has been asked and not yet fully answered is what happens when a litigant seeks to enforce an ICC arbitral award against a foreign state in the courts of the United States, but the foreign state asserts that it is not subject to the personal jurisdiction of those courts.
{44} ARB: Mandatory, Court-Annexed-General

Biderman, David T. and Steven C. Gonzalez. "The changed rules of evidentiary privilege." California Lawyer; June, 1999; 19(6): pp. 30.
Article discusses recent changes to the Evidence Code relating to confidentiality, admissibility, and enforceability of mediation communications and settlements. Author then notes that a federal court recently ruled that the California statutory mediation privilege is not applicable in a federal question case with pendant state claims, and instead it used a common law federal privilege.
{21} MED: RELATED PROCESSES-GENERAL
{132} CONFIDENTIALITY

Blair, Ronald J. "Last Appeal for Mediation." The Tax Adviser; January, 2000; 31(1): pp. 56-57.
The Author proposes that mediation should be involved earlier on in IRS taxpayer disputes. Currently mediation occurs at the end of the process, when the original IRS examiner's protest is handled by an Appeals Officer, who then advocates the IRS's position and be objective in negotiating a settlement. The Author suggests making the IRS examiner advocate the IRS's position and making the Appeals Officer act solely as an objective mediator.
{21} MED: RELATED PROCESSES-GENERAL
{108} SUBJ MATTER: TAX

Bockstiegel, Karl-Heniz. "Practical Problems in Resolving Disputes in an International Construction and Infrastructure Project." International Business Lawyer; May, 1999; 27(5): pp. 196-199.
In construction and infrastructure projects, which entail complex contractual constructions and a need for continuity and fulfillment of the contract in spite of disputes on specific questions, the formulation of contracts and dispute resolution are of particular importance. However, major problems face dispute resolution in this field. They include: (1) the need for conservatory and preliminary measures as disputes must not lead to a halt in implementation of the project, (2) involvement of state entities, which continue to be the main providers of infrastructure, (3) damage claims in

long-term contracts, (4) contract adaptation by arbitrators, (5) recent developments in the practice, (6) battles of documents, which make the arbitral procedure extremely complicated, (7) multi-party disputes, (8) the growing relevance of financing and insurance, and (9) changes in political and legal environment, particularly in the former socialist countries.
{80} SUBJ MATTER: CONSTRUCTION

Boeglin, Marcus C. "Reconsidering a Key Tenet of International Commercial Arbitration:Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 62-67.
Boeglin discusses whether finality of awards is a barrier to arbitration in the context of banking and finance. Boeglin explains that arbitration is not commonly utilized in most banking and finance transactions. The author discusses numerous advantages and disadvantages of arbitration from the perspective of banks, but he emphasizes that, in the business community, parties place more importance on finality, efficiency of procedural rules, and experienced arbitrators. Boeglin concludes by stating that finality is not an obstacle to arbitration, but he feels that most bankers are not familiar with and have not assessed the benefits of arbitration.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L

Boesch, Lawrence. "Defense Tactics In Civil Actions that Ignore Arbitration Clauses." Los Angeles Lawyer; February, 2000; 22(11): pp. 15.
Defense attorneys should consider several issues when using the "sandbagging" approach to ignore an arbitration clause in civil litigation. Sandbagging is the act of ignoring the arbitration clause until discovery has been completed and then motioning for summary judgment on account of the arbitration clause. Dangers with this technique include the risk that the court will deny Defendant's motion on the basis that ignoring the clause is construed as a waiver of the clause.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Boivin, Philippe. "Reconsidering a Key Tenet of International Commercial Arbitration:Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived? (Comment)." Journal of International Arbitration; March, 2000; 16(1): pp. 68-70.
The issue discussed in this article is whether parties to an arbitration need to have finality of their awards. In the context of international arbitration, there is a general rule of finality of awards as evidenced by the fact that many countries and arbitral institutions have passed rules limiting the appeal of arbitration proceedings. Although parties may wish to appeal an award, the

author prefers finality over the delays and the additional costs that arise from pursuing an appeal.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L

Born, Gray B. "International Forum Selection and Arbitration Agreement: Considerations for U.S. Companies." New York Law Journal; September, 1999; 222(47): pp. 1.
Dispute resolution provisions in international contracts typically take the form of: (1) forum selection clauses; or (2) arbitration agreements. Choosing between these options, and then executing that choice, raises a number of planning and drafting considerations. Because of the importance of forum selection, sophisticated U.S. companies often include contractual dispute resolution provisions in their international agreements. Properly planned and drafted, these provisions can materially reduce the uncertainties inherent in international commercial disputes and offer a measure of legitimate partisan advantage.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L

Brennan, Michael G. "The Ethical Rules." For the Defense; January, 2000; 42(1): pp. 51.
Author discusses ethical principles and a lawyer's conduct at settlement conferences. Specifically, he discusses the ABA Committee on Ethics and Professional Responsibility's position on various Model Rules of Professional Conduct.
{74} SUBJ MATTER: GENERAL

Carbonneau, Thomas E. Cases and Materials on the Law and Practice of Arbitration (2d); 1999; pp. 1350.
This casebook is a systematic and comprehensive discussion of the field of arbitration. Topics include the extension of arbitration to HMOs, employment (including age and sex discrimination), securities, antitrust and other consumer activities. International and domestic matters are discussed in detail. Sample problems supplement the traditional case presentation, and a section of the text supplies detailed instruction on how to draft arbitration agreements and establish in-house dispute resolution processes.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{76} SUBJ MATTER: COMMERCIAL

Cassidy, Padraic. "Judiciary Floats New Standards for Court-Connected Mediators." New Jersey Law Journal; August, 1999; 157(5): pp. 8.
Article reports that the New Jersey judicidary is proposing a set of standards of conduct for court-connected mediators. The guidelines would include,

among others, disclosure of potential conflicts, formation of an advisory board, and a study on the need for a formal complaint process.
{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS
{21} MED: RELATED PROCESSES GENERAL

Cato, Mark. So You Really Want to be an Arbitrator?; 1999; pp. 22.
This book serves as an introduction for those who desire to be arbitrators. It defines arbitration and illustrates some of its advantages. It explains the preliminary meeting, the interlocutory period, and the hearing. In addition, it touches on the role of the arbitrator and the role of the court in an arbitration. This book appeals to all arbitral disciplines, but discusses more specifically rent review arbitration.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{90} SUBJ MATTER: HOUSING - RENTAL

Charles B. Craver. "Mediation: a Trial Lawyer's Guide." Trial; June, 1999; 35(6): pp. 36.
Mediation is un under utilized gatekeeper that should be employed to resolve disputes outside of the courtroom. The key to being an effective mediator is to consider the opposing counsel's viewpoint. Mediators should remain neutral and work to bridge the gap between the opposing sides by suggesting an agreeable middle ground. This can be accomplished by employing either a substance - oriented, process oriented, or relationship oriented style. Besides selecting the appropriate style, there are three critical components that make or break successful utilization of mediation: timing, preparation, and initial contact between parties. Finally, to ensure effective mediation the attorney must be prepared to suggest a rainbow of alternatives so parties from both sides are cable of finding one that appears nonthreatening. In the case of deadlock, the best solution is to hold separate sessions before reconvening in a final pursuit of peace.
{21} MED: RELATED PROCESSES-GENERAL

Clemens, Murray A. "Jurisdiction to Grant Relief From Forfeiture in Commercial Arbitrations." The Advocate; September, 1999; 57(5): pp. 705-707.
Article discusses the issue of whether an arbitrator has jurisdiction to grant the equitable remedy of relief from forfeiture in an arbitration conducted under British Columbia's Commercial Arbitration Act. Article advances a purposeful and expansive view of arbitral powers and concludes that an arbitrator must take into account all applicable laws and has at his or her disposal all remedies available to a court, including the right to grant relief from forfeiture.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL

{92} SUBJ MATTER: INT'L

Coben, James R. & Thompson, Peter N. "Minnesota's Phantom Menace: The Civil Mediation Act." Bench & Bar of Minnesota; September, 1999; 56(8): pp. 33-36.
Article discusses inconsistencies and problems with Minnesota's Civil Mediation Act and its enforcement. Haghighi v. Russian American Broadcasting is used as an example of problems associated with Minnesota's Civil Mediation Act. Examines the necessity of the use of magic words in mediation settlement agreements.
{21} MED: RELATED PROCESSES-GENERAL

Cohen, Lynne. "Dispute Resolution, In-house Style: Dispute Resolution is No Longer the Flavour of the Month with Big Canadian Corporations and the Lawyers Who Work for Them: DR Now Encompasses a Wide Range of Techniques." Canadian Lawyer; January, 2000; 24(1): pp. 40-45.
Canadian corporations are relying on dispute resolution techniques more frequently than ever before. Author discusses The Corporate Counsel's Guide to DR, a book designed to guide corporate lawyers through workplace controversies, training programs and dispute resolution contract and formation; author also addresses the DR programs of various Canadian corporations.
{74} SUBJ MATTER: GENERAL

Cohen, Lynne. "Measuring Mediation." Canadian Lawyer; October, 1999; 23(10): pp. 37-41.
Canada's first full-scale mandatory court-connected mediation program in Ottawa is reviewed. The article compares the costs and benefits that this program produces. The process there is not replacing the trial, but it takes the place of the cumbersome negotiation regime that had been involved in the pre-trial process. The opinions and statements from several attorneys and others involved or affected by the new process.
{127} REQUIREMENTS: MANDATE TO USE

Colbey, Richard. "Review: Construction and Engineering Arbitration." New Law Journal; August, 1999; 149(6900): pp. 1208-1210.
Book review of Construction and Engineering Arbitration by Peter Sheridan. The book is useful for general questions and is easy to understand; however, the section on construction law is small. The book discusses when it is proper to remove an arbitrator and the ways in which an arbitrator can be removed.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
[80] CONSTRUCTION

Connell, Dana S. "An Employment Lawyer's Top 40 Counseling Cases." Employee Relations Law Journal; Summer, 1999; 25(1): pp. 29-67.

This article outlines forty counseling cases which address common employee relation problems faced by employers today. These cases and their principles are meant to serve as guidelines for companies when they are making employment decisions. The author suggests that the rulings in these cases will serve a counseling function for companies who take heed of them. As a result, these companies and employers will be able to avoid costly and unnecessary litigation.
{93} SUBJ MATTER: LABOR-GENERAL
{93} SUBJ MATTER: LABOR - EMPLOYMENT (NON-UNION)

Conrod, Monique. "Focus On: Canadian Bar Association Annual Meeting." Canadian Lawyer; September, 1999; 23(9): pp. pgs 10-14.
Eugene Meehan, recently elected president of the Canadian Bar Association, discusses his agenda priorities for his term. He is concerned about protecting the legal profession from interferrence by non-legal service providers, and refers to the group as know-nothing document-preparers who are out there ready to eat our [attorney's] lunch. Among the groups that Meehan plans to attack are mediators and arbitrators who he believes are invading lawyer's territory.
{151} ROLE OF LAWYERS

Cooper, Christopher. Mediation & Arbitration by Patrol Police Officers; 1999; pp. 81.
Author teaches mediation and arbitration skills to police officers to assist them in effectively resolving disputes that may arise when the officers are on patrol. Author, who is a former police officer himself, understands the stress and speed of which calls begin and end and has addressed these concerns when describing the mediation process.
{155} TEACHING

Cooper, Nicholas C. "Avoiding Common Grievance Complaints." New York Law Journal; September, 1999; 222(61): pp. 1, (col 1).
Author suggests various means of avoiding common grievance complaints in order to circumvent expanded inquiry into a lawyer's practice. He proposes that common problems may be eliminated by constructing a written agreement regarding the work that is to be performed, communicating with the client and making a candid effort to avoid fee disputes as well as disputes with other attorneys.
{134} DISPUTE PREVENTION

Cremades, Bernardo M. "The Need for Conservatory and Preliminary Measures." International Business Lawyer; May, 1999; 27(5): pp. 226-230.
In arbitral proceedings, conservatory and preliminary measures are necessary to secure the implementation of the arbitral award and to ensure the

efficiency of the proceedings. This is clear in cases of international trade, which may involve companies located in countries that have not ratified arbitration treaties. Judges must take a number of factors into account before they grant or deny conservatory and preliminary measures: (1) color of right, (2) unequivocal danger of delay, (3) interim measures, and (4) losses involved. As for disputes in which a sovereign entity is involved, the court must decide whether the dispute involves a public act or a commercial act to determine whether the state has waived its sovereign immunity from jurisdiction. Good faith is important in international trade, and a state, which alleges sovereign immunity after having waived it, violates the principle of pact sunt servanda.
{92} SUBJ MATTER: INT'L

Davidson, Robert B. "Use of Discovery in Arbitrations Seen to Expand." New York Law Journal; July, 1999; 222(12): pp. S4, col 2.
Document discovery is a well-known device, not only in judicial proceedings, but in arbitration proceedings as well. Due to the expedited nature of arbitration, arbitrators are authorized to order parties to produce documents and other information relevant to the proceeding. This article reviews the methods available to compel discovery in arbitration settings, such as pre-hearing depositions and subpoenas duces tecum, and explores the issues involved when arbitrators compel discovery from non-parties. The article also discusses the underlying reasons for the recent trend of broadened discovery in both domestic and international arenas.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

Dimolitsa, Antonias. "Reconsidering a Key Tenet of International Commercial Arbitration:Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 2001; 16(2): pp. 77-79.
Antonias Dimolitsa concludes that parties to an arbitration generally do not have a need or desire for a review of arbitral awards. First, Dimolitsa states that arbitration is inconsistent with merit-based appeals of awards because review delays finality and eliminates the benefit of being able to choose arbitrators and because arbitrators extensively examine the merits of each case. Second, if parties desire to have their award reviewed, they can agree to appellate procedures in their arbitration agreement. Third, Dimolitsa supports the creation of an International Court of Arbitral Awards in order to maintain the consistency and predictability of international law regarding the enforcement of awards.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L

Discussion from the 7th Geneva Global Arbitration Forum. "Reconsidering a Key Tenet of International Commercial Arbitration: Is

Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 105-114.
A discussion was held among various arbitration scholars in which the issue of creating an appellate level for arbitration was debated. The reason for having such a level was that arbitrators are not infallible. The reasons for not creating such a level were: the process would be slowed down, and those on the appellate board will not have been chosen by the parties as the arbitrator already is. Rather than create an appellate level, it may be better to improve the process on the first try.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD

Drahozal, Christopher R. "Commercial Norms, Commercial Codes, and International Commercial Arbitration." Vanderbilt Journal of Transnational Law; Janurary, 2000; 33(1): pp. 79-80.
This article examines whether the incorporation of commercial norms into commercial codes is an appropriate law-making strategy. It asserts that costs of relying on commercial norms may be outweighed by the benefits of incorporating commercial norms into commercial codes. The article also looks to international commercial arbitration as a source of evidence for evaluating the appropriate role of commercial norms in resolving contract disputes.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Eckland, T. Nikki. "The Safe Schools Act: Legal and ADR Responses to Violence in Schools." The Urban Lawyer; Spring, 1999; 31(2): pp. 309-328.
This article discusses the responses to the growing problem of violence in schools. The legislative response, the Safe Schools Act, is essential because it provides funding. There still exist the traditional legal responses of punishment and rehabilitation. Increasingly, as the SSA suggests, ADR responses focusing on prevention, including heightened security, peer mediation, conflict resolution, increased participation of students and families and alternative education programs have been utilized. The author examines the obstacles of the Act, and concludes that a combination of resources from the Act and ADR techniques is the best answer to the growing problem of violence in schools.
{83} SUBJ MATTER: EDUCATION

El-Sharkawi, Mahmoud Samir. "New Trends in Egyptian Arbitration Law." Journal of International Arbitration; March, 1999; 16(1): pp. 5-24.
This article detailed the development of The Arbitration and Conciliation Act by Nigeria. It was established to provide a uniform framework for the

arbitration and conciliation of domestic and international commercial transactions. Historically, Nigeria has had models of alternative dispute resolution in existence as part of its Islamic law. However, in Nigeria, like most developing countries, the traditional adjudication system is over-burdened and ill equipped to manage foreign and domestic claims. Because of this The Arbitration and Conciliation Act was implemented as an effective means of handling disputes.
{92} SUBJ MATTER: INT'L

Epstein, Joe & Berkowitz, Steve. "Mediating Disputed Adult Guardianship and Conservatorship Issues." Colorado Lawyer; June, 1999; 28(6): pp. 45-48.
This is a case study of the effects of disputed guardianship for elderly parents on a family. Mediation is a viable alternative for such families if the elderly parent has the physical and mental capacity to participate in a mediation. Screening factors are helpful in making such a determination. Mediation offers families a confidential, private, and safe alternative to litigation. Mediation also facilitates communication and provides an opportunity to address the underlying emotional issues and develop creative solutions.
{101} SUBJ MATTER: PROBATE

Estreicher, Samuel & Sam S. Shaulson. "Bypass Unions to Negotiate Individual Agreements to Arbitrate Statutory Discrimination Claims." New York Law Journal; January, 2000; 223(16): pp. 1.
In ALPA v. Northwest Airlines, Inc., the D.C. Circuit held that an employer may require union employees to agree to arbitrate statutory discrimination claims as a condition of employment without first bargaining with the union. The holding provides employers with a new avenue for securing agreements to arbitrate statutory discrimination claims without running afoul of federal labor law. This holding was decided under the Railway Labor Act, but it should be applicable to cases brought under the National Labor Relations Act.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Evans, James. "Alternative Dispute Resolution." California Lawyer; September, 1999; 19(9): pp. 56-57.
Article discusses the proliferation of Alternative Dispute Resolution web sites on the Internet. Discusses the characteristics of websites such as the American Arbitration Association and American Bar Association Section on Dispute Resolution. Utilizes these examples the demonstrate the increased presence of many well-known ADR groups on the Internet.
{74} SUBJ MATTER: GENERAL

Ezrati, Lester D. "Draft Fast Track Mediation Procedure." Tax Executive; September, 1999; 51(5): pp. 443.
The IRS requested comments on the draft Fast Track Mediation Procedure from the Tax Executives Institutes. This article is the response letter sent from TEI President Lester D. Ezrati to Thomas C. Louthan. TEI believes that the mediation procedure should not be limited to non-docketed cases because mediation could facilitate the resolution of docketed cases before they even reach trial. The more opportunities taxpayers and the IRS have to resolve their disputes outside the courtroom, the better.
{108} SUBJ MATTER: TAX
{133} COURT REFORMS TO ACCOMMODATE DISPUTE RESOLUTION PROCESS

Farber, Eugene I. "Commercial Cases in Japan." New York Law Journal; January, 2000; 223(4): pp. 3.
The Author describes various differences between appearing as counsel before the Japan Commercial Arbitration Association (JCAA) and the American Arbitration Association (AAA). The differences described include starting the arbitration, delays, selection of arbitrators, discovery, language, pre-arbitration conferences, time, attendance, subpoenas, formality and ex parte communications, objections, oaths, eye contact, rules of evidence, cross-examination, settlement and awards.
{76} SUBJ MATTER: COMMERCIAL
{124} COMPARISONS: CROSS-CULTURAL

Faures, Andre. "Reconsidering a Key Tenet of International Commercial Arbitration: Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 80-82.
Finality of Arbitration is no longer a generally accepted rule. An appeal to an arbitral award is possible if the parties provide for it in their agreement, or within one month of the notification of the award. Arbitrators in opposition of lack of finality argue that it increases time commitment, forces arbitrators to deal with changing situations and circumstances, and increases costs.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

Feeney, Rosa M. & Fitzpatrick, Elizabeth A. "The new Catch-22 discovery disputes in UM/SUM claims." New York Law Journal; June, 1999; 221(103): pp. 1.
Regulation 35-D, the standard unified endorsement governing supplementary uninsured/underinsured motorist coverage, did not resolve the issue of the insurance carriers' entitlement (or lack thereof) to discovery before arbitration. In many instances, courts refuse to intervene in the arbitration process and order discovery, while UM/SUM arbitrators routinely refuse to

involve themselves in the discovery process. This has created a Catch-22 for the insurance carrier seeking to obtain discovery and investigation to defend a claim.
{91} SUBJ MATTER: INSURANCE

Fielding, Stephen L. The practice of uncertainty: voices of physicians and patients in medical malpractice claims (1st); 1999; pp. 230.
Author addresses the uncertainty of medical malpractice cases, including insurance and liability insurance claims. Includes physician, patient, and malpractice interviews.
{98} SUBJ MATTER: MEDICAL MALPRACTICE
{91} SUBJ MATTER: INSURANCE
{44} ARB: MANDATORY, COURT-ANNEXED- GENERAL

Findlay, Max & John Kendall. Solicitors Journal; October, 1999; 143(41): pp. 1022-23.
A former litigator in a big city law firm, John Kendall recently gave up this livelihood to pursue a career as an independent mediator and arbitrator. Mr. Kendall says that the best part of his new job is the mediation aspect because there is enormous satisfaction in helping two parties settle their dispute the way they want to. Mr. Kendall's advice to lawyers is that they must give their clients proper information about their alternatives, including negotiation, mediation, expert determination and arbitration.
{114} 3RD PARTY: PRACTICE OF LAW
{151} ROLE OF LAWYERS

Fisher, Bruce. "The Y2K Act of 1999: Encouraging Mediation, Not Litigation." Tennessee Bar Journal; February, 2000; 36(2): pp. 20.
The Y2K Act has four main purposes, one of which is to encourage mediation between parties to disputes arising out of Y2K problems. The Act essentially operates as a defensive measure against Y2K litigation, as is evident from its pre-litigation notice requirement, limitation on punitive damages, pre-emption of state law, proportionate liability, and its failure to create any additional liability beyond the remedies currently available.
{128} REQUIREMENTS: STATUTORY OR RULES
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Fried, Lisa. "Securities Disputes: Power to Select Arbitrator Brings Problems." New York Law Journal; October, 1999; 222(46): pp. 5-6.
The National Association of Securities Dealers and New York Stock Exchange recently began allowing attorneys to select arbitrator off a list of fifteen computer generated names. Article discusses the advantages and disadvantages of this change including: increasing use of peremptory challenges, developing computer databases of arbitrator names, and the effect upon the level of the arbitrator's experience and training.

{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{106} SUBJ MATTER: SECURITIES
{155} TEACHING

Fried, Lisa I. "EEOC Mediation: A Budget Crunch May Cripple a New Program." New York Law Journal; February, 2000; 223(23): pp. 5.
Due to a cut in federal funding, the Equal Employment Opportunity Commission must slash $8 million from its budget this year, thus funding for the district offices is in limbo, and the fate of the agency's much-hyped mediation program hangs in the balance.
{96} SUBJ: MATTER: EMPLOYMENT (NON UNIONS)

Fried, Lisa I. "New Arbitration Pilot Program for Securities Brokers." New York Law Journal; January, 2000; 223(18): pp. 5.
Seven brokerage firms will participate in a new two-year pilot program that gives investors a broader choice of forums to arbitrate disputes with their brokers. Investors, represented by an attorney will be able to arbitrate their cases using either the American Arbitration Association or JAMS. Until now, brokerage firms usually resolved disputes through a securities self-regulatory organization (SRO) under the NASD or the NYSE, Due to the questioning by investor advocates regarding the neutrality of SROs, the pilot program was created to help to instill investor confidence in the system.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{106} SUBJ. MATTER: SECURITIES
{149} QUALITY CONTROL

Gaillard, Emmanuel. "A Strong Start for NAFTA." New York Law Journal; February, 2000; 223(23): pp. 3.
The widely held view that international arbitration is the most appropriate means through which to resolve disputes between a foreign investor and the host country of the investment is reflected in the fact that many of the bilateral investment treaties in force today refer to arbitration. It is currently estimated that more than 1,300 such treaties are currently in force, often between industrialized countries and developing countries, with a view to promoting and protecting investments.
{92} SUBJ MATTER: INT'L

Gaillard, Emmanuel. "Power of Parties to Alter Judicial Review of Award." New York Law Journal; June, 1999; 221(105): pp. 3.
Parties to international arbitrations are increasingly allowed to tailor the proceeding to their needs. They have been excluding, expanding, limiting, and heightening the standard of judicial review of the arbitral award by the national courts of the seat of the arbitration. In comparing the Swiss, Belgian, and U.S. treatment of judicial review of arbitral awards, Gaillard notes that

the trend to allow greater flexibility of parties to contractually altering judicial review reflects the a la carte approach of many countries. The law of the seat of the arbitration is becoming less important than the law of the place of execution--judicial review of the award will be left to the jurisdictions where enforcement is sought.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L
{133} COURT REFORMS TO ACCOMMODATE DISPUTE RESOLUTION PROCESS

Gaillard, Emmanuel. "Use of General Principles of International Law in International Long-Term Contracts." International Business Lawyer; May, 1999; 27(5): pp. 193-240.
Advocating the general principles of international law as a method in the arbitration of international long-term contract disputes. Used to identify a body of generally accepted legal principles derived from different national legal systems, the method is said to lend predictability and reliability to international arbitration so that truly international solutions can be reached.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Gaillard, Emmanuel; Savage, John. Fouchard, Gillard, Goldman on international commercial arbitration (1st); 1999; pp. 1280.
This book examines both the broader trends in international arbitration and more specific issues arising in national legislation and arbitral practice. The book follows the chronology of a typical arbitration: first considering definitions and sources, then addressing the arbitration agreement, the constitution of the arbitral tribunal, the arbitral procedure, the law applicable to the merits of the dispute, and the court review of the award.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Galik, Annette. "Mediating Child Support Contempt Cases." Texas Bar Journal; June, 1999; 62(6): pp. 543-544.
Some obligor parents refuse to pay child support and believe that they are right in doing so. Imposing a jail sentence is counterproductive. Mediation provides a neutral arbitrator that can encourage both parents to work together for solutions that are in the best interest of the child. A pilot mediation program has yielded the following lessons: 1) counsel experienced in mediation allowed their clients private sessions with the mediator with power of review, 2) mediation afforded the parties more relief than a court decree, and 3) some cases needed more than 1 mediation session.

{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS

Ganong Pope, Sally and Baruch Bush, Robert A. "Understanding Conflict and Human Capacity: The role of Premises in Mediation Training." Family and Conciliation Courts Review; January, 2000; 38 (Special Issue 1): pp. 41-47.
Underlying mediator practices and techniques are deeper premises and values that guide and shape practice. Mediation training should include articulation and explanation of the premises that underlie the form of practice being taught. These premises underlie the transformative orientation to mediation practice, can be conveyed within an overall training design, and enrich the teaching of skills and techniques themselves.
{21} MED: RELATED PROCESSES-GENERAL
{155} TEACHING

Gary, Susan N. "Mediating Probate Disputes." Probate & Property; July, 1999; 13(4): pp. 11-15.
This article explores the nature of probate disputes, the benefits of using mediation to resolve such disputes, the potential problems which may stem from mediating probate disputes, and the general guidelines for using mediation. The article closes with a detailed example of how a probate mediation session might run.
{101} SUBJ MATTER: PROBATE

Gates, Rodney J. International Commercial Disputes: A Guide to Arbitration and Dispute Resolution in APEC Member Economies (2d); 1999; pp. 281.
Published by the APEC (Asia Pacific Economic Cooperation Organization) Committee on Trade and Investment, this work discusses the arbitration regulations applicable to international commercial disputes. The text focuses upon countries in the Pacific Rim, including Australia, Brunei, Chile, The People's Republic of China, Hong Kong, Indonesia, Japan, The Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, The Republic of the Philippines, The Russian Federation, Singapore, Chinese Taipei, Thailand and Vietnam.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Gershenfeld, Joel Cutcher. "The Social Contract at the Bargaining Table: Evidence From a National Survey of Labor and Management Negotiators." Labor Law Journal; Fall, 1999; 50(3): pp. 214-222.

This paper argues that collective bargaining as an institution both reflects and contributes to broader change in the social contract at work. The paper draws on data from a recent national random sample survey of labor and management negotiators. The date indicates that today there are a substantial percentage of strikes in which an agreement is never reached. The paper concludes, that about one in ten negotiations involves direct threats around the use of replacement workers; there are substantial barriers to achieving first contracts; innovations such as interest-based bargaining are embraced by a substantial minority of negotiators, but are seen differently by union and management representatives, and the presence of women as chief negotiators has not been fully sorted out.
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Gladieux, Jennifer E. "Medicare+Choice Appeal Procedures: Reconciling Due Process Rights and Cost Containment." American Journal of Law and Medicine; Spring, 1999; 25(1): pp. 61-116.
The Medicare+Choice program now provides Medicare benefits to the beneficiaries of many private health care plans. These beneficiaries have been skeptical of the care due in part to the uncertainty of their appeal rights. HCFA is currently addressing some of these appeal issues.
{89} SUBJ MATTER: HOSPITALS
{91} SUBJ MATTER: INSURANCE

Gleeson, Murray. "The Future of Civil Justice - Adjudication or Dispute Resolution." Otago Law Review; Annual, 1999; 9(449): pp. 8.
While dispute resolution methods have their place, and are increasingly used, the old-fashioned method of civil adjudication serves an important function, and should not be abandoned. The author argues that when a judge applies a law that has a flexible, case-by-case analysis, the judge is acting in a dispute resolution role, rather than an adjudicatory role. Dispute resolution methods are best for these types of cases. On the other hand, civil adjudication is best suited to cases where bright line law is applied, since this type of law allows for constancy and predictability in the law.
{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS

Gleeson, Murray. "The Future of Civil Justice - Adjudication or Dispute Resolution." Otago Law Review; Annual, 1999; 9(3): pp. 449-457.
There can be a conflict between predictability in the law and justice. Rules should be more flexible so that each case can be determined on its own merits. Dispute resolution is an appropriate procedure to resolve conflicts on a case to case basis.
{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS

Glenn, Heidi & Sheryl Stratton. "Houghton Proposal Would Exempt APAs From Public Disclosure." Tax Notes; June, 1999; 83(10): pp. 1391-1392.
Houghton's proposal would require the IRS to reclassify Advanced Pricing Agreements (program allowing multinational taxpayers to enter into agreements with the IRS regarding allocation of income and expenses among its constituent parts) as confidential tax return information and therefore, exempt them from public disclosure. Opponents worry that it would allow the IRS to establish effective tax rates for multinational corporations on international transactions in secrecy and without effective congressional authorization and oversight. Proponents stress the need to protect confidential taxpayer information, which may include trade secrets and cost information that would compromise a company's competitive edge. The proposal is still being fine-tuned--whether the legislation would consider some form of public disclosure like the annual Treasure Department report.
{108} SUBJ MATTER: TAX
{81} SUBJ MATTER: CORPORATE
{132} CONFIDENTIALITY

Gordon, Elizabeth Ellen. "Why Attorneys Support Mandatory Mediation." Judicature; March, 1999; 82(5): pp. 224-231.
This article examines the advantages and disadvantages of mandatory mediation. It begins by stating that there is little evidence of benefits of mediation, and then explains why some clients and attorneys favor mediation. The article is based on an experiment started in 1992 by the North Carolina Superior Courts called the Mediated Settlement Conference Pilot Program. The author evaluates the mediation program and states that the program has no effect on the trial date, does not change the way in which attorneys handle cases, gives the negotiation process some structure, and satisfies clients because they express their feelings. The article then focuses on the mediator's role in dispute resolution.
{21} MED: RELATED PROCESSES- GENERAL

Grauberd, Allen. "Principal Issues Involved in Negotiating Large System Software Licensing Deals." New York Law Journal; June, 1999; 221(113): pp. 5.
This article addresses the principal issues encountered in negotiating business-to-business large system software licenses. The author discusses the need for several components of software licenses including, the essential terms, a scope of rights, fees, maintenance and support, proprietary protection, intellectual property indemnification, confidentiality, virus and Y2K certification, warranty and limitations of liability, acceptance and termination.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{81} SUBJ MATTER: CORPORATE

Greenberger, Gerald A. "Negotiating with Insurers." New Jersey Law Journal; February, 2000; 159(9): pp. 32.
The vast majority of claims against insurance companies are resolved by negotiation, compromise and settlement, rather than litigation. Many lawyers seem to appreciate a balance between zealous advocacy and professional courtesy, in conducting litigation or negotiation a corporate deal. To negotiate effectively with insurance claims analyst, attorneys need to try and understand the responsibilities of those analysts and treat them as trained professionals.
{91} SUBJ MATTER: INSURANCE

Hamblett, Mark. "Southern District Begins Mediation for Employment Cases." New York Law Journal; February, 2000; 223(34): pp. 1.
Southern District court officials are seeing results from a newly launched program to attack rising backlog of pro se employment discrimination cases. Judges have began sending employment cases that are ripe for settlement to mediation, where volunteer lawyers help plaintiffs reach agreement with their employers. Recently several cases have been settle without going to trial.
{96} SUBJ: MATTER: EMPLOYMENT (NON UNIONS)

Hamilton, Jonnette Watson. "The Significance of Mediation for Legal Education." Windsor Yearbook of Access to Justice; September, 1999; 17 pp. 280-294.
This article addresses the actual impact and potential implementation of mediation in a law school curriculum. The author focuses on the most common definition of mediation as accepted within Canadian legal circles - an extended negotiation involving an acceptable third party who has no authoritative decision-making power and who assists the parties in reaching a mutually acceptable agreement. She identifies how mediation is incorporated in the University of Calgary's curriculum. The University of Calgary requires classes that touch on mediation, but the class focus remains on litigation. The author concludes that the potential significance of medication as part of the legal education is wholly unrecognized.
{83} SUBJ MATTER: EDUCATION

Hamilton, P. et al. The Permanent Court of Arbitration: International Arbitration and Dispute Resolution; 1999; pp. 318.
The Permanent Court of Arbitration is an offspring of the 1899 Hague Convention for the Pacific Settlement of International Disputes. The Permanent Court affords a wide range of optional methods of dispute settlement, including arbitration, fact-finding commissions of inquiry, conciliation and mediation. Utilized by developing countries has lead to the resolution of disputes between governments and private persons that serves

as an investment guarantee, increasing confidence of foreign investors in these countries. This book contains summaries of arbitral awards and also summaries of the reports form conciliation and inquiry commission, as well as bibliographic references for those awards and reports. Taken together, the awards and other findings provide the reader with a record of ht history and the work of the Permanent Court of Arbitration
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Hamilton, P., et al (eds.). The Permanent Court of Arbitration: International Arbitration and Dispute Resolution (Centenary); 1999.
Discusses contributions of the Permanent Court of arbitration to international law and dispute resolution. Also gives summaries of all of the awards, decisions, and reports rendered since the Court's establishment in 1899.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Hardie, William H. "Arbitration: Post-Award Procedures." The Alabama Lawyer; September, 1999; 60(6): pp. 314-325.
The Alabama Code bars enforcement of pre-dispute arbitration agreements. The U.S. Supreme Court held in Volt Information Sciences, Inc. v. Leland Stanford, Jr. Univ., 489 U.S. 468 (1989) that the Federal Arbitration Act (FAA) does not reflect a congressional intent to occupy the entire field of arbitration. The Alabama State courts can follow the FAA procedure to vacate an arbitration award. While the U.S. Supreme Court applies a de novo standard of review to review an arbitration case for clear error, the Alabama Supreme Court has left some mystery as to what standard it will apply.
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Harkavy, Jonathan R. "Privatizing Workplace Justice: The Advent of Mediation in Resolving Sexual Harassment Disputes." Wake Forest Law Review; Spring, 1999; 34(1): pp. 135-169.
The Article addresses the emergence of mediation in resolving sexual harassment disputes in the employment context. The author reviews recent workplace harassment cases and identifies certain unresolved issues under Title VII coverage of harassment. The author then discusses the growth of mediation as the preferred method of resolving such disputes. After noting both the pros and cons of mediation in sexual harassment disputes, the author concludes that the advantages outweigh the disadvantages in that context. However, the author warns of several potential problems with the use of mediation in this fashion.
{96} SUBJ: MATTER: EMPLOYMENT (NON UNIONS)

Harpole, Sally A. "Dispute Resolution in Asia." International Business Lawyer; October, 1999; 27(9): pp. 429-431.
Kluwer Law International by Michael Pryles (ed) is a must read for anyone seeking a basic overview of the dispute resolution process in the following ten Asian Countries: Australia, China, Hong Kong, Japan, Malaysia, the Philippines, Singapore, Taiwan, Thailand, and Vietnam. The dispute resolution process of each country is described in a separate chapter written by a local expert from that particular country that breaks down the dispute resolution process in place by examining how disputes are resolved through litigation in the courts, arbitration, and mediation. The editor and coauthor compile this information in the introduction to compare and contrast the major Asian dispute resolution systems. The main utility of the book is its creation of a general order and categorical system that allows both a general comprehensive examination and understanding into the different dispute resolution systems in place throughout Asia as well as a sepcific examination of the dispute resolution system in place in each of the ten respective countries.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L
{74} SUBJ MATTER: GENERAL

Hartwell, M. Beresford. "Reconsidering a Key Tenet of International Commercial Arbitration: Is Finality of awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 75-76.
This article challenges the proposition for the Annulment of Arbitral Awards for several reasons. First, it goes against the prinicipal of Arbitral autonomy. Next, it will cause arbitral proceedings to be conducted with one eye to the overarching Court. Last, the Nation States will not willingly adhere to such an entity.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

Hawke, Constance. "Report of the American Bar Association's Seminar on Negotiating and Structuring International Commercial Transactions." Corporate Counsel's Quarterly; January, 2000; 16(1): pp. 90-107.
Author prepared report of various speakers and materials that were presented at the ABA seminar on negotiating and structuring international transactions; contains materials involving: sale of goods; labor law and employment considerations; cross-border equipment leasing; intellectual property licensing; impact of trade and customs law; and negotiating and drafting joint ventures.
{92} SUBJ MATTER: INT'L

Hemphill, Robert. "A model for an Office of the Olympic Dispute Resolution Advisor." The Law Society Journal; June, 1999; 37(5): pp. 61-63.

Article claims that there should be an office of the Olympic Dispute Resolution Advisor to which disputes would be referred first by contract. The advisor would have authority to decide which dispute resolution methods would be used. This new procedure, if mediation success rates remain high, will likely lower the cost of staging the Olympics.
{126} REQUIREMENTS: CONTRACTUAL CLAUSES
{146} ORGANIZATION POLICIES AND RULES

Hibberd, Peter R. and Paul Newman. ADR and Adjudication in Construction Disputes (1st); 1999; pp. 305.
This book demonstrates the utilization of different ADR models to resolve disputes in the area of construction. The authors explain that two traditional modes of dispute resolution, arbitration and litigation, are not suitable when dealing with certain disputes in the construction arena. With the advent of general contractors outsourcing much of the contruction process to subcontractors and the introduction of the Housing Grants, Construction and Regeneration Act of 1996, new methods to resolve disputes are necessary.
{80} SUBJ MATTER: CONSTRUCTION
{21} MED: RELATED PROCESSES- GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED- GENERAL

Hill, Marvin F., Jr.; Westhoff, Tammy. "No Song Unsung, No Wine Untasted--Employee Addictions, Dependencies, and Post-Discharge Rehabilitation; Another Look at the Victim Defense in Labor Arbitration." Drake Law Review; May, 1999; 47(3): pp. 399-465.
Labor arbitration case law seems to favor management. This is particularly true in situations where the employee's conduct is egregious or criminal. As is the case in criminal defense, an individual's mental or physical capacity is taken into consideration as a mitigating factor in labor arbitration. Arbitrators balance the prospect of salvaging the employee's job against the employer's interest in punishing the employee's conduct, and advocates have the burden of showing that the cause is beyond the employee's control as opposed to his/her unwillingness to perform the job. As contract readers, the arbitrators' job is to implement the intent of the parties at time of contract formation. Therefore, an arbitral forum is not the proper place for championing the cause of dependent and addicted employees.
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNION)

Hill-Harvey, Karimu F. "Securities Arbitration 1999 Settlements, Laptops, Experts & Arbitrators." Practicing Law Institute; July-August, 1999; Book pp. 471-514.
The concept of arbitration has become the preferred method of choice for resolving disputes with securities brokerage firms and stockbrokers. the goal of arbitration is to provide public customers, member firms, and associated

persons with another effective way to resolve their disputes. the arbitration settlement conference is voluntary and facilitated by a SRO third party that is a neutral party. The settlement arrived at by the panel saves the conflicted parties substantial time, expense and the avoidance of protracted litigation. Business attorneys are encouraged to developed alternative dispute resolution expertise to provide credible advice and avoid professional liability problems. The principal benefit of arbitration is that it provides a prompt, inexpensive alternative to litigation in the courts. The securities arbitration process has proven to be a fair and expedient method of resolving a large number of customer disputes. Arbitration proceedings through NASD provides an alternative means of resolving disputes in securities transactions.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Hoffman, Eileen Barkas. "The Impact of the ADR Act of 1998." Trial; June, 1999; 35(6): pp. 30.
Alternative Dispute Resolution (ADR) emerged in 1990 and has been slowly gaining speed every since. ADR encompasses a multitude of different forms for resolving disputes. Many courts already have ADR programs installed. The ADR ACT enables these existing programs to be codified and encourages other courts to develop ADR programs. While the Act highlights the positive attributes associated with ADR it also exposes some important concerns in the area of funding ethics and selecting neutrals. Today's practicing attorney is expected to have a working understanding of at least underlying principles of ADR and its involvement throughout the judicial process, including these vital ADR tips.
{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS

Hole, Margaret. "Mediation and the Bedevilling Problem of Professionalisation." Law Society Journal; October, 1999; 37(9): pp. 24.
There is little possibility of mediation obtaining the level of a profession in New South Wales (NSW) unless the diverse community of mediators work[] together on the issue said Dr. Alan Tidwell, the Director of Students at Macquarie University's Graduate School of Management. There are several barriers that mediation must overcome in order to be considered a profession, particularly the presence of non-lawyer mediators. Further, mediation does not meet certain requirements that are common to other professions, namely prolonged specialised [sic] training in an abstract body of knowledge, a sense of service, and acceptance by the general public. Thus, the professionalisation of mediation will never occur except through the formation of a powerful national body under the leadership of the legal profession, concludes Tidwell.
{151} ROLE OF LAWYERS

Hunnicutt, William L. "Arbitration and Special Master Proceedings: Overlooked Family Law Alternatives." American Journal of Family Law; Spring, 1999; 13(1): pp. 15-23.
This Article looks at alternative dispute resolution proceedings in the context of marital disputes. The author advocates the use of two alternatives: binding arbitration and / or special master proceedings pursuant to state rules of procedure or Rule 53 of the Federal Rules of Civil Procedure. Each of these methods can reduce financial and emotional costs involved with a divorce as well as keep the family information confidential. The author also explores the practical advantages and limitations of the use of ADR in the context of divorce.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Insurance Practice Institute. 3rd Annual Insurance Practice Institute (3rd); 1999.
The Insurance Practice Institute discusses the managed care and insurance industries and the mediation and arbitration of insurance coverage disputes. The book also includes information about insurance transactions and attorney communication with insurance companies and insureds.
{21} MED: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

International Bar Association. Enforcement of Arbitration Agreements in Latin America: Papers Presented at the 1998 Vancouver IBA Conference; 1999; pp. 120.
Each chapter in the book addresses the enforcement of arbitration agreements in eight Latin American countries. A chapter starts with an introduction of the standards of arbitration agreements in that country and applies practical situations to these standards.
{92} SUBJ MATTER: INT'L

Johnston, Jason Scott. "Communication and Courtship: Cheap Talk Economics and the Law of Contract Formation." Virginia Law Review; April, 1999; 85(3): pp. 385-501.
Article addresses the economic incentives and legal liability imposed on those incentives during contract deal-making. Courtship is the process by which parties communicate information to determine whether it is in their best interests to make a deal. Author shows how the law can impose liability upon statements made during the courtship process. Author concludes offer and acceptance no longer provide guidance but rather that even optimistic statements in failed negotiations may constitute fraud.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Kaufman, Ian Jay. "The Domain Name System: Dispute Resolution and Nice Classification System." International Bussiness Lawyer; Janurary, 2000; 28(1): pp. 35-41.
This article provides an overview of the current structure of the Internet Corporation for Assigned Names and Numbers ("ICANN") and the recommendations contained in the Final Report of the WIPO Internet Domain Name process. It discusses the new mandatory Dispute Resolution Policy and the proposed new cyber-squatting legislation. A proposal is set forth concerning the addition of new generic top-level domain names ("gTLDs") corresponding to the Nice International Classification of Goods and Services, as well as concerning a category of non-commercial gTLDs.
{105} SUBJ MATTER: SCEINCE & TECHNOLOGY
{144} LEGISLATION

Kaufmann, David J. "Support for National Franchise Council." New York Law Journal; June, 24 1999; 221(120): pp. 3.
New York's Attorney General has established a partnership between his office and the National Franchise Council (NFC) for the purpose of better dealing with violators of the New York Franchise Act. One aspect of this partnership is that violators of the Act can accept referral to the NFC's alternative law enforcement program, which, among other things, gives franchisees the opportunity to mediate disputes which arise from the franchisor's violation. The Attorney General considers this an important step in protecting franchisees who may not be able to afford drawn-out litigation.
{76} SUBJ MATTER: COMMERCIAL

Keeva, Steven. "When Mediation Doesn't Work: Landmark Civil Rights Ruling Illustrates Cases that Offer No Alternative to Court." ABA Journal; October, 1999; 85 pp. 88-89.
The panel sponsored at the ABA Annual Meeting by the Section of Dispute Resolution all agreed that Brown v. Board of Education had to be litigated. Frank E.A. Sander, a Harvard law professor, used Brown v. Board of Education as an example that not every dispute is appropriate for mediation. He said that mediation of Brown would have prevented the constitutional principles from being announced. Moreover, the racial climate was one in which people would not voluntarily agree to end segregation, agreed Fred Gray, a civil rights attorney who represented Rosa Parks and the Rev. Martin Luther King. The panelists did agree, however, that just because mediation was inappropriate for Brown, it does not mean that it should be avoided in all civil rights disputes.
{21} MED: RELATED PROCESSES-GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS

Kendall, John. "in Support of Arbitration in International Long-Term Contracts." International Business Lawyer; May, 1999; 27(5): pp. 201-207.

As binding systems of commercial dispute resolution, expert determination and adjudication are governed by the law of contract and do not amount to more than what the contract stipulates. Expert determination does not have to be a due process system, and can therefore save time and cost. As opposed to arbitration, adjudication resolves disputes as they arise and not afterwards. These systems have been developed not in support of arbitration, but as a more economic way to resolve disputes. The binding nature of these systems not only resolves disputes, but helps deter them as parties realize the threat of an adverse decision. This aspiration, however, may at occasions be nothing more than a fond hope.
{76} SUBJ MATTER: COMMERCIAL

Kheel, Theodore Woodrow. The Keys To Conflict Resolution: Proven Methods Of Settling Disputes Voluntarily; 1999; pp. 136.
Author addresses dispute resolution law in the United States, including compromise, arbitration and award, mediation, and negotiation.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{38} MED: NON-BINDING RECOMMENDATION PROC-GENERAL PROC EARLY NEUTRAL EVAL
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Kilberg, William J. "Wright v. Universal Maritime Service: Can Collective Bargaining Agreements Trump Discrimination Suits?" Employee Relations Law Journal; Summer, 1999; 25(1): pp. 1-4.
This article addresses the affect of the United States Supreme Court's decision in Wright v. Universal Maritime Service on the present law concerning collective bargaining agreements. The author explains that the Court declined to explicitly address the holding that arbitration under a collective bargaining agreement would not result in the preclusion of a Title VII suit. However, the author alludes that the Court did make the implicit suggestion that a collectively bargained grievance-arbitration scheme would be a more favorable and efficient alternative to the cost and effort involved with equal employment litigation.
{93} SUBJ MATTER: LABOR-GENERAL
{93} SUBJ MATTER: LABOR - DISCRIMINATION

Kissinger, Wayne E. "Resolving Y2K Disputes Through ADR: New Problems, Innovative Solutions." Pennsylvania Law Weekly; June, 1999; 22(23): pp. S3.
There are fewer than 50 Y2K lawsuits pending in U.S. courts today, but more could be filed within the next couple of years. Kissinger suggests that Y2K disputes should be resolved through ADR processes like mediation and arbitration. They can be tailored to specific, complex, and technical disputes. And, they promote the preservation of essential business relationships

through timely settlement, financial savings, and collaborative resolutions. Federal and state legislation has attempted to minimize or avoid Y2K litigation by proposing mandatory arbitration, caps on punitive damages, and restrictions on class action suits in efforts to steer companies toward ADR processes in efforts to alleviate the potential Y2K cost to society.
{21} MED.: RELATED PROCESSES-GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{79} SUBJ MATTER: CONSUMER

Kline, Julie. Arbitration Clauses in Consumer Financial Services: Samples, Strategies and Cases; 1999.
Could not obtain book to write abstract.
{79} SUBJ MATTER: CONSUMER

Kwiatkowska, Barbara. "Award of the Tribunal in the First Stage of the Eritrea/Yemen Procedings." International Journal of Marine and Coastal Law; March, 1999; 14(1): pp. 125-136.
This article examines the Award made by the five member Arbitral Tribunal which was made in accordance to an arbitration agreement between the governments of the State of Eritrea and the Republic of Yemen in October 1996. The subject of dispute between these two governments are islands, islets, rocks, and low-tide elevations in the southern Red Sea. The tribunal made their decision with respect to the disputed areas by weighing each government's chain of title. They also considered the authority each government exerted over the disputed regions and geographical factors of the diputed areas.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{97} SUBJ MATTER: MARITIME

Laurence McMahon. "Contracts Negotiated Away From Business Premises and the 1997 Distance Selling Directive." Irish Law Times; June, 1999; 17(9): pp. 139.
The European Communities (Cancellation of Contracts Negotiated Away from Business Premises) Regulations 1989 and the 1997 Distance Selling Directive are only two of the numerous European Consumer protection laws enacted under the European Union causing a huge impact on the legal profession in Ireland. This new wave of legislation is aimed at equalizing the playing field for consumers in inferior bargaining positions and as a result creates a new dimension to be considered in contractual disputes. The 1989 Regulations is aimed at protecting the consumer from doorstep selling by allowing qualifying consumers to cancel certain types of contracts. If a contract falls within the scope of the 1989 Regulations then the consumer must be provided with a cancellation notice and violators may face monetary penalties. The 1997 Directive regulates contractual product sales performed at a distance. This Directive must be implemented by the year 2000 or

Ireland could be liable for damages resulting from the Directive's absence. The 1997 Directive is very similar to the 1989 Regulation except that the directive does not require both the consumer and supplier to be present at the time of contract formation.
{92} SUBJ MATTER: INT'L

Lawrence, Kent. "Some modest reponses to some modest suggestions or let's talk for real about the pros and cons of arbitration." CBA Record; September, 1999; 6(13): pp. 64-65.
Viewpoint responds to Jack Joseph's Modes Suggestions for Provisions in Arbitration Agreements to Keep Client and Lawyer Out of Trouble, which deals with Mandatory Court Ordered Arbitration in Illinois. Imposing the minuet rules of evidence on arbitration proceedings will compromise the speed, efficiency, and cost effectiveness of arbitration. Requiring all arbitrators to be Illinois lawyers eliminates the advantage of having experts with substantive subject matter expertise involved. Although there are legitimate modifications of generic arbitration clauses, which can be crafted, Joseph's article is of no aid in such an endeavor.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD
{138} ETHICS: GENERAL

Lecerf, Michel & Blanc, Guillaume. "The arbitration in the Treaty for the Harmonisation of African Business Law (OHADA)." The International Construction Law Review; April, 1999; 16(2): pp. 287-293.
This article examines the institutional arbitration established by the OHADA (Organisation pour l'Harmonisation du Droit des Affaires en Afrique) Treaty. The Treaty's goal is to implement a harmonized legal framework which will, in turn, lead to an upturn in economic activity and the return of investor confidence. The article discusses the composition and role of the Common Court of Justice and Arbitration. In addition, it discusses the appointment, confirmation, and replacement of arbitrators. In addressing the award of the arbitrator, the monitoring and effectiveness of awards are discussed.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{81} SUBJ MATTER: CORPORATE
{92} SUBJ MATTER: INT'L

Leibowitz, Wendy. "Online Dispute Settlements: A Winning Option." New York Law Journal; June, 1999; 221(123): pp. 5.
The interest in online alternative dispute resolution has seen dramatic growth, especially in the last few months. Web sites offering online mediation are proliferating, many aimed at resolving disputes over technology or cyberspace issues. One company offering such mediation services, Online

Ombuds, mediated 175 disputes at the eBay site which is a major internet auction. Success rates were over 50%, with that number expected to rise in the future.
{105} SUBJ MATTER: SCEINCE & TECHNOLOGY
{79} SUBJ MATTER: CONSUMER

Leibowitz, Wendy R. "Cybermediation: ADR in the Electronic Age." New Jersey Law Journal; July, 1999; 157(1): pp. 26.
With the advancement of technology and the proliferation of business online, many web sites now offer a convenient forum to resolve customer complaints - cybermediation. The interest in online alternative dispute resolution has skyrocketed. With the increase of cyberconsumers and thus increased consumer complaints, many see the advantages of settling disputes electronically rather in the courthouse. This article reviews the apparent success of cybermediation and acknowledges the concerns involved with electronic settlements.
{105} SUBJ MATTER: SCEINCE & TECHNOLOGY

Lepera, Christine and Costello, Jeannie. "Alternative Dispute Resolution: What the Business Lawyer Needs to Know 1999." Practicing Law Institute Litigation and Administrative Practice Course Handbook Series; June, 1999; 221(86): pp. 3.
ADR is an increasingly good fit for disputes involving intellectual property and cyberspace. Recent ADR developments include a Virtual Magistrate, an online mediation system named Online Ombuds Office, and the (WIPO) World International Property Organization's establishment of online mediation and arbitration facility for disputes related to trademark infringement of Internet domain names. ADR's increased usage in the entertainment industry is result of its suitability to the small world realities of the industry. Also, discussion of ADR's usage in employment disputes as an equitable, efficient and cost-conscious approach to resolution.
{21} MED: RELATED PROCESSES-GENERAL
{107} SUJB MATTER: SPORTS AND ENTERTAINMENT
{96} SUBJ MATTER: EMPLOYMENT (NON UNIONS)

Levy, Laurent. "Reconsidering a Key Tenet of International Commercial Arbitration: Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 83-85.
There is no need for an appellate body for arbitration. First, it is not necessary because (1) the states give parties the possibility of waiving the setting-aside procedure, and (2) the parties may customize appeals. Second, appeals are not opportune - there is a question of speed, there is a question of cost, and there is a question of procedural difficulty.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

Lewin, David and Peterson, Richard B. "Behavioral outcomes of grievance activity." Industrial Relations; October, 1999; 38(4): pp. 554.
Authors describe a study of the effects of grievance filing and its settlement on the workers' performance, work attendance, and promotion rates. The study shows that these measures declined after the settlement of the grievance. Furthermore, the study found that supervisors had similar traits after the settlement, suggesting that employers employ retribution against the filers.
{93} SUBJ MATTER: LABOR-GENERAL

Liebscher, Christoph and Schmid, Andreas. "Arbitration Law in Austria." Journal of International Arbitration; March, 1999; 16(1): pp. 25-36.
This article is an overview of arbitration laws in Austria. It first discusses the arbitration agreement: the requirements of content and form, who can be a party to an arbitration agreement, relevant applicable law, termination of an arbitration agreement, and its independent nature of the contract in which it is included. It explains the conditions in which Austrian courts have the ability to intervene in arbitration matters. It also explains various aspects of the arbitral tribunal, arbitral procedure, the Award, grounds for setting the Award aside, and enforcement of the Award.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L

Litchman, Lori. "In Arbitration, Overseer has Final Say Challenge of Agreement to Arbitrate Shot Down." Pennsylvania Law Weekly; September, 1999; 22(39): pp. 13 col. 1.
The Superior Court said in dicta that an arbitrator's stated reliance on his past experience to make a credibility judgment about a witness did not constitute impermissible reference to evidence outside the record sufficient to vacate an arbitration award. At common law, unless restricted by agreement of the parties, the arbitrator is the final judge of all legal and factual questions. A contrary position would defeat the purpose of arbitration proceedings as a quick and uncomplicated method of obtaining justice.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Liu, Tien-lung. The chameleon state: global culture and policy shifts in Britain and Germany, 1914-1933; 1999; (1st): .
Author examines the labor policy of Great Britain and Germany in the 20th Century, including arbitration.
{93} SUBJ MATTER: LABOR-GENERAL
{92} SUBJ MATTER: INT'L
{125} COMPARISONS: HISTORICAL

Love, Lela P. "Training Mediators to Listen: Deconstructing Dialogue and Constructing Understanding, Agendas, and Agreements." Family and Conciliation Courts Review; Jananuary, 2000; 38(1): pp. 27.
This article examines how mediators are trained to mine conversations to extract meaning from conversation between disputing parties. This concept of mining conversations is an essential tool to keep discussions moving forward. The article examines several teaching strategies for training mediators to effectively mine conversations.
{21} MED.: RELATED PROCESSES-GENERAL

Love, Lela P. "Deconstructing Dialogue and Constructing Understanding, Agendas, and Agreements." Family and Conciliation Courts Review; January, 2000; 38(Special Issue 1): pp. 27-40.
This article examines the unique components of dialogue between disputing parties that mediators extract and reframe to move the discussion forward. The same components provide the building blocks of the discussion agenda and the framework of the mediation agreement. The article suggests a number of teaching strategies for training mediators to listen effectively and proactively.
{21} MED: RELATED PROCESSES-GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Lowry, L. Randolph. "To Evaluate or Not: That is the Question!." Family and Conciliation Courts Review; Jananuary, 2000; 38(1): pp. 48-61.
This article suggests that the question of whether a mediator should evaluate a conflict in mediation is the wrong question to focus on. Instead, the more pressing question is when and how evaluation can be successfully carried out.
{21} MED.: RELATED PROCESSES-GENERAL

Lowry, Randolph L. "To Evaluate or Not: That is not the Question!." Family and Conciliation Courts Review; January, 2000; 38(Special Issue 1): pp. 48-61.
In most mediation, it is not a question as to whether or not evaluation will take place but a question of when and how evaluation takes place. The author offers suggestions on times when evaluation might be appropriate and helpful approaches to mediator evaluations, while greatly valuing and clinging to the dynamic of mediation as a continuing negotiation between the parties.
{21} MED: RELATED PROCESSES-GENERAL

Lund, Mary Elizabeth. "A Focus on Emotion in Mediation Training." Family and Conciliation Courts Review; Jananuary, 2000; 38(1): pp. 62-68.
Emotional control and emotional awareness are two key skills for successful mediation. Mediation trainers should therefore use experimental exercises to

heighten trainee mediators awareness to the level of emotion present in conflict. This awareness is important for developing the requisite skills needed by a mediator to appropriately respond to client's emotional needs and to form realistic expectations concerning the likely outcome of a mediation.
{21} MED.: RELATED PROCESSES-GENERAL

Lund, Mary Elizabeth. "A Focus on Emotion in Mediation Training." Family and Conciliation Courts Review; January, 2000; 38(Special Issue 1): pp. 62-68.
Many mediation trainings begin with a theoretical framework of interest-based negotiations and communication techniques. The author presents specific mediation training techniques and the rationale for how such techniques prepare the trainee mediator to deal with emotion in high-conflict mediation. This approach give the trainees concrete suggestions for diffusing high emotion in a mediation.
{21} MED: RELATED PROCESSES-GENERAL
{155} TEACHING

Mackey, Aurora. "Close calls." California Lawyer; June, 1999; 19(6): pp. 36-41.
Article provides examples of mediation used in the entertainment industry, a sexual harassment dispute, a bad housing investment, a divorce settlement, and a neighborhood dispute. In each of these cases, the author discusses how close the parties were to giving up on mediation and how the mediators were able at the last minute to affect the parties.
{21} MED: RELATED PROCESSES-GENERAL

Mamula, Kris B. "Bankruptcy Mediation Hits Western District By Storm; Alternative to Litigation Saves the Day in Penguins Reorganization." Pennsylvania Law Weekly; September, 1999; 22(38): pp. 10-11.
A new mediation program in the Western District of Pennsylvania is credited with settling differences that compromised the future of the Penguins, Pittsburgh's professional hockey franchise.
{21} MED: RELATED PROCESSES - GENERAL

Marmo, Michael. "Acceptability As A Factor in Grievance Arbitration." Labor Law Journal; Summer 1999; 50(2): pp. 97-114.
Questioning assumptions about the objectivity of the arbitration process, this article argues that the grievance arbitration system raises a number of questions. Specifically, these questions pertain to the acceptability of the arbitrator, the acceptability of the arbitrators ruling, and the acceptability of the process. The articles examines various issues surrounding grievance arbitration, including the arbitrator selection process, the conduct of

arbitration hearings, grievance mediation by arbitrators, and the proper role of the arbitration process.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Marques Antunes, Nuno Sergio. "The Eritrea-Yemen Arbitration: First Stage - The Law of Title to Territory Re-Averred." International and Comparative Law Quarterly; April, 1999; 48(2): pp. 362-386.
Author reviews the conclusions made by the Tribunal established by the Arbitration Agreement between Eritrea and Yemen. The two States asked the Tribunal to determine the territorial sovereignty of islands in the Red Sea. Author addresses the Tribunal's emphasis on the substantial law of title to territory. Article describes the Tribunal's use of history of the two States concerning the islands, the conclusion no doctrine of reversion exists in international law and importance of the geographical positions of the islands in relation to the territorial sea limits. Author concludes Tribunal's decision demonstrates the possibility of bridging the gap between regional legal traditions and contemporary international law.
{92} SUBJ MATTER: INT'L

Martin, John W. "The Alternative Dispute Resolution Act of 1998." Colorado Lawyer; April, 1999; 28(4): pp. 37-38.
Article discusses the Alternative Dispute Resolution Act of 1998. The Act mentions early neutral intervention, mediation, minitrial, and arbitration as forms of Alternative Dispute Resolution. The article explores the reasons for the implementation of the Act, the goals of the Act, and how it will impact civil cases in the federal court system. The article explains the law of the Act. In addition, it discusses the power and compensation of arbitrators and neutrals.
{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS

Massey, Barton C. & Sheryl Stratton. "New IRS Design to Move Dispute Resolution Up-Front in the Process." Tax Notes; January, 2000; 86(4): pp. 462-64.
The IRS modernization conference revealed an innovative "prefiling" agreement pilot program that would allow taxpayers to get advice, resolve both factual and legal issues, and essentially, resolve disputes without resorting to litigation. There will be five to ten coordinated examination program taxpayers selected to participate in the pilot program. In addition, the IRS will also be testing a "fast track mediation" program in four cities around the country. It will be offered to taxpayers that meet certain minimum monetary amounts.
{21} MED: RELATED PROCESSES-GENERAL
{108} SUBJ MATTER: TAX

Maxfield, Marietta M. "Preview of the New Title Insurance Arbitration Rules." Probate & Property; January-February, 2000; 14(1): pp. 44-53.
The Author gives a description of the Commercial Arbitration Rules for the 1987 Title Insurance Arbitration Rules and the Supplemental Rules to the Title Insurance Arbitration Rules. Together they are referred to as the Amended Rules, which are part of the current Title Insurance Arbitration Rules. The article provides a five page comparison chart of each of the 1987 TIA Rules, CAR and Supplemental Rules.
{104} SUBJ MATTER: REGULATORY

Mazadoorian, Harry N. "Designing Corporate ADR Systems." New York Law Journal; August, 1999; 222(38): pp. S3, (col. 1).
This article first describes indicators of ADR's growing strength in society. ADR is growing dramatically in the corporate sector. The benefits of corporate use of ADR are listed: white dollar savings, delay reduction, preservation of business relationships, privacy, and an opportunity for the corporation to consider changes in the way it addresses disputes and confict resolution. A section entitled institutionalizing ADR discusses various similarities in corporate ADR programs. The article then discusses the steps in designing an individual ADR program for a corporation.
{81} SUBJ MATTER: CORPORATE

McArthur, Robert S. "Arbitrary civil rights?" Loyola of Los Angeles Law Review; April, 1999; 32(3): pp. 881-905.
This note examines the Ninth Circuit Court of Appeals case of Duffield v. Robertson Stephens & Co.. A three judge panel in Duffield announced that an employee may not be forced to arbitrate her Title VII statutory claims despite a pre-dispute compulsory arbitration agreement. The note explores the history of the enforceability of mandatory arbitration clauses in employment agreements while looking primarily at the Civil Rights Act of 1991. The Ninth Circuit decision and reasoning are examined and weaknesses are criticized. Finally, the note argues that despite the court's flaws in reasoning, the Duffield decision is correct.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS
{94} SUBJ MATTER: LABOR-DISCRIMINATION

McEwen, Joan I. "ADR: Moving From Adversarial Litigation to Collaborative Dispute Resolution Models." The Advocate; September, 1999; 57(5): pp. 699-704.
Article discusses various alternative dispute resolution systems and initiatives under way in British Columbia and notes the trend toward diverting disputes from the court system to ADR is gaining momentum. Article addresses the public acceptance of ADR and increasing governmental

enthusiasm for ADR as a method for making justice more accessible and reducing the costs associated with traditional litigation.
{74} SUBJ MATTER: GENERAL
{92} SUBJ MATTER: INT'L

McHale, M. Jerry. "The Notice To Mediate: An Update." The Advocate; Janurary, 2000; 58(1): pp. 53-58.
Cost, delay and complexity impede access to justice and undermine the effectiveness of the court system. The Canadian Bar Association concluded that a focus on early consensual resolution of disputes holds the greatest promise for reducing cost and delay. The Notice to Mediate procedure has shown itself to be technically sound and effective. It brings mediation to bear on a number of disputes, and does so in a more selective and flexible way than the fully mandatory schemes being used in other jurisdictions.
{21} MED: RELATED PROCESSES-GENERAL

McLaughlin, Gerald T. and Cohen, Neil B. "Unconscionability; Transferable Letters of Credit." New York Law Journal; May, 1999; 221(90): pp. 3 col 1.
The unconscionability of a computer manufacturer's dispute resolution clause is examined in Brower v. Gateway 2000 Inc. The holding suggests that New York will allow a finding of UCC 2-302 unconscionability in an unusual situation when only the substantive prong (without the procedural prong) of the unconscionability test has been satisified. The Banca Del Sempione v. Provident Bank of Maryland holding states that the independence principle means that the transferee-beneficiary takes owership free of defenses that the issuer may have had against the original beneficiary. In this case a transferable letter of credit acts more like a negotiable instrument than a common law assignment.
{76} SUBJ MATTER: COMMERCIAL

McNaughton, Valerie. "Active Listening: Applying Mediation Skills in the Courtroom." Judges Journal; Spring, 1999; 38(2): pp. 23-28.
This Article discusses the use of active listening by judges so as to facilitate the efficient resolution of cases. The author describes active listening in several contexts and gives examples of how active listening can be used in court proceedings to ensure that justice is done efficiently. A judge can utilize several techniques to obtain a deeper understanding of all relevant issues in a proceeding and therefore decide a case with all necessary information. The Article concludes that judges can use mediation techniques to administer a higher quality of justice.
{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS

Medina, Standish Forde, Jr. "An ADR Mechanism to Settle Class Actions." New York Law Journal; June, 1999; 221(112): pp. 1.
This article discusses how ADR can be used to settle large class action litigation. The author uses the decision of Willson v. New York Life Insurance Co. as an example of a class action that successfully used ADR to settle the claim of nearly three million life insurance policyowners. The author maintains that other class actions can also be settled using a similar process. The author begins the article by describing the Willson two-phase process. In the first phase the insurer designated a claim review team to review and decide claims. If the policy owner for any reason is dissatisfied with the claim review teams decision, the policy owner may then appeal said decision to the second phase which is heard by an independent arbitrator. After describing the two-phase process, the author then evaluted the two-phase process, arguing it that the process was adaptable for use in other class actions.
{146} ORGANIZATION POLICIES AND RULES
{74} SUBJ MATTER: GENERAL

Middlemiss, Sam & Nicole Busby. "Arbitration: A Suitable Mechanism for Adjudication of Unfair Dismissal Claims?" Civil Justice Quarterly; April, 1999; 18: pp. 149-161.
Authors address the changes made in Great Britain by the passage of the Employment Rights (Dispute Resolution) Act 1998. Authors note the greatest change will be the use of arbitration as an alternative to legal adjudication. Article notes the problems faced by the tribunals in deciding employment cases and how these problems can be overcome by selecting a single, educated arbitrator. Authors conclude the arbitrator's decision will be as binding and final as a tribunal's decision.
{93} SUBJ MATTER: LABOR-GENERAL

Minnesota Continuing Legal Education. Certified Civil Arbitration Training; 1999.
Compilation of various Minnesota CLE presentations on ADR processes, including arbitration, moderated settlement conferences and early neutral evaluation. Included within the text are "Rules and Other Laws Governing ADR" by Richard D. Snyder; "How to Manage the Arbitration Process" by Phyllis Karasov; How to be an Arbitrator" by Gary A. Weissman; "Arbitrating with pro-se Parties" by David J. Meyers; "How to Conduct a Moderated Settlement Conference and an Early Neutral Evaluation" by James F. Dunn; more.
{38} NON-BINDING RECOMMENDATION; PROC - GENERAL; PROC - EARLY NEUTRAL EVAL
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Mitchell, Greg. "Out-of-State Arbitrators Allowed in California." New York Law Journal; July, 1999; 222(10): pp. 5.
In response to a 1998 California Supreme Court decision prohibiting enforcement of arbitration agreements made by out-of-state attorneys, California lawmakers passed legislation authorizing out-of-state attorneys to arbitrate cases in California. However, because of the concern about discipline and the need to track appearances, the California Supreme Court adopted new regulations similar to those for pro hac vice admission to California courts. This article reviews the discipline and tracking provisions of these new regulations and the important implications it has for jet-setting lawyers who have been doing this for years.
{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS

Mohebi, Mohsen. The international law: character of the Iran-United States Claims Tribunal; 1999; pp. 417.
Author discusses the character of the Iran-United States Claims Tribunal, including arbitration and the power of inernational courts.
{92} SUBJ MATTER: INT'L
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Mosten, Forrest S. "Mediation 2000: Training Mediators for the 21st Century." Family and Conciliation Courts Review; Jananuary, 2000; 38(1): pp. 17-28.
This is an introduction explaining the events that occurred at a three day training seminar in Pasadena, California. The seminar addressed policies in mediation training, demonstrated training techniques, and generated written components to represent what took place the seminar. Mediation authorities, Dean Jay Folberg, Professor Josh Stulberg, and Professor Maria Volpe, lead discussions raising issues to stimulate advancement in many areas of mediation training. Seven modules were presented to provide an opportunity to observe mediation trainers practicing the craft. Finally, cutting edge articles concerning mediation training were produced by some of the most prominent leaders in the craft of mediation.
{21} MED.: RELATED PROCESSES-GENERAL

Mullarkey, Mary J. "ADR in Colorado: A Vision for Restoring Community." The Colorado Lawyer; June, 1999; 28(6): pp. 17.
Chief Justice Mullarkey posits a vision in which Colorado becomes a place where disputes are resolved in more constructive and less destructive ways outside of court--the goal being to increase opportunities for building and maintaining community and connections among people. She desires a change in the legal culture that entails shifting an adversarial-based approach to conflicts to one with a collaborative and consensus-oriented approach. The change starts with teaching conflict resolution skills and processes in schools,

particularly law schools, and fostering peer mediation programs. Further, the government and the judiciary should go further in promoting the use of ADR methods before resorting to the court process.
{155} TEACHING
{21} MED.: RELATED PROCESSES-GENERAL

Mullenix, Linda S. "Resolving Aggregate Mass Tort Litigation: The New Private Law Dispute Resolution Paradigm." Valparaiso University Law Review; Spring, 1999; 33(2): pp. 413-447.
This article examines a famous law review note, which described a paradigm shift away from bipolar traditional litigation to a public law litigation, a then new model. The article criticizes the note's public law litigation paradigm, observing how it currently fails to characterize complex disputes and fails to illustrate the approaches of private aggregate dispute resolution. In doing so, the article examines public law litigation and applies the public law model to mass tort litigation. Moreover, the article discusses mass tort litigation's shift-at the close of the twentieth century-from public law litigation to privatization of aggregate claims resolution.
{110} SUBJ MATTER: OTHER TORTS

Murray, Daniel E. "A Potpourri of Recent Federal Arbitration Cases Involving Domestic and International Arbitration." BYU Journal of Public Law; Fall, 1999; 13(2): pp. 293-353.
This article addresses the circumstances in which an award obtained through the arbitration process may be vacated based on both statutory and non-statutory grounds. By utilizing existing case law for illustration, the article speaks to specific situations that would warrant the vacation of an arbitration award. Moreover, this article is an analysis of various federal cases dealing with judicial interference in the arbitration process. The author recommends that the Federal Arbitration Act should adopt new measures in order to resolve the prevalent and counterproductive problem of the courts' excessive eagerness to hear appeals concerning arbitral awards.
{136} ECONOMIC ADVANTAGES OF ADR
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD

Mustill, Lord. "Reconsidering a Key Tenet of International Commercial Arbitration: Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 86-92.
Before initiating the proposed appellate Court for arbitration, several misconceptions must be cleared up. For instance, that arbitration needs no justification or that arbitration is monolithic. In addition to the clearing up of common misconceptions, several questions must be answered, such as what

kind of appeal the court will address, what kind of court will decide these appeals, and what kind of arbitrations will be subject to appeal.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

National Institute for Trial Advocacy. PowerPoint for Litigators: How to Create Demonstrative Exhibits and Illustrative Aids for Trial, Mediation and Arbitration; 1999; pp. 436.
Text (similar in structure and style to other PowerPoint instrcutional manuals) provides information for the legal user. Presentation advice and descriptions are largely general, although text is a helpful tool for attorneys seeking to employ the application.
{21} MED: RELATED PROCESSES - GENERAL
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Neesemann, Carroll E. & Laura R. Taichman. "Manifest Disregard for Limits on Judicial Review of Arbitration." New York Law Journal; January, 2000; 223(18): pp. 1.
The deterrent and remedial functions of anti-discrimination statutes may be lost if legal rights protected by the statutes are not enforced by arbitrators or reviewing courts. In Halligan v. Piper Jaffray, Inc., the Second Circuit vacated the arbitration award and held that the arbitrators manifestly disregarded the "law or the evidence or both." Moreover, the court stated that the absence of explanation may reinforce the reviewing court's belief that there was "manifest disregard." The Daily News, L.P. v. Newspaper & Mail Deliverers' Union of New York quickly followed Halligan and seemed to increase the level of scrutiny required by the manifest disregard standard by overturning the award despite the lengthy explanation.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD

Newman, Lawrence W. "Evidence in Arbitration." New York Law Journal; September, 1999; 222(64): pp. 3.
The 1999 International Bar Association Rules (IBA Rules) for the Taking of evidence in International Commercial Arbitration are an improvement over the 1983 Rules but could still use some improving. The 1983 Rules addressed the following areas associated with the arbitration of international commercial disputes: Procedural Uncertainties, Document Production, Requesting Documents, and Witness Testimony. The 1999 Rules strengthen the 1983 Rules by making improvements on the rules governing the request of documents and witness testimony. In addition, the 1999 add a new section to specifically discuss the Conduct of Hearings. These improvements should increase the effectiveness of the rules in the arbitration of international commercial disputes because the new rules contain fewer ambiguities and a fresh new thought process that will be more satisfying to Anglo American Lawyers by allowing for greater discovery. The main downfall of the rules,

however, is the absence of rules on the preservation of the evidence proceedings and a lack of certainty concerning the type of arbitration that will govern in the case of a dispute.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L
{128} REQUIREMENTS: STATUTORY OR RULES

Nolan, John, R. "Mediation as a Tool in Local Environmental and Land Use Controversies." New York Law Journal; August, 1999; 222(35): pp. 5.
John R. Nolon discusses the use of mediation to resolve disputes arising in the environmental and land use context. Applying for a land use or development permit from the government involves negotiations between many parties, such as landowners, local administrative agencies, and neighbors. Because obtaining a permit is a lengthy and complicated process, open negotiations early in the process helps resolve environmental disputes and prevents negative environmental impact. In this context, administrative agencies use mediation to formulate public policy and develop consensus on pending regulations.
{21} MED: RELATED PROCESSES-GENERAL
{84} SUBJ MATTER: ENVIRONMENT
{87} SUBJ MATTER GOV'T

Nolan, Terrence J. "Mandatory Arbitration of Union Member's Discrimination Claims." New Jersey Law Journal; April, 1999; 156(4): pp. 32.
Discussing the seemingly contrary holdings of the United States Supreme Court in Alexander v. Gardner-Denver Co. and Gilmer v. Interstate/Johnson Lane Corp., and the Courts failure to reconcile them in Wright v. Universal Maritime Corp., on the issue of whether employees under a collective bargaining agreement with a mandatory arbitration clause are barred from litigating discrimination claims in federal court. In the wake of these holdings, waiver of one's right to litigate employment discrimination claims in federal court must be clear and unmistakable.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{77} SUBJ MATTER: CIVIL RIGHTS
{94} SUBJ MATTER: LABOR-DISCRIMINATION

Oliver, Roseann & Knape, Frederic T. "Illinois arbitrations: pre-hearing discovery and the right to a full and fair hearing." CBA Record; September, 1999; 13(6): pp. 32-37.
Article examines the discovery process in arbitrations. Limitations of the power of the arbitrator to compel discovery under the Illinois Uniform Arbitration Act are discussed. Article further explores the limitations that

discovery in the arbitration process, has on one's right to a full and fair determination of issues.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Ormsten, Franklin D. "Securities Arbitration Procedure Manual." New York Law Journal; January, 2000; 223(19): pp. 2.
The Securities Arbitration Procedure Manual is touted as a book "indispensable for anyone who practices securities arbitration law." David E. Robbins, the author of the work, demonstrates in-depth knowledge and familiarity with the field. A practitioner in the field of securities arbitration, he addresses "damage amounts, mediation, enforceability of arbitration agreements, post-arbitration procedures and the law governing punitive damages." It is current in its information and is updated yearly by pocket parts. With little criticism by the reviewer, Ormsten, the manual is complete, practical, and thorough.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{106} SUBJ MATTER: SECURITIES

Pachtman, Arnold. "Negotiating with the Chinese: getting to hao!." Corporate Counsel's Quarterly; October, 1999; 15(4): pp. 24-31.
Article prescribes how to negotiate with the Chinese. The author lists several common pitfalls and then describes some strategies for avoiding them. Hurrying through a deal, underestimation of the Chinese, holding the negotiations solely on economic terms, and impatience can lead to a bad deal. Some of the strategies to avoid these pitfalls that are discussed are preparation, choice of negotiators, control of communications, best alternatives, flattery, and building relationships.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Parkinson, Lisa. "Mediating with High Conflict Couples." Family and Conciliation Courts Review; January, 2000; 38 (Special Issue 1): pp. 69-76.
When individuals are overwhelmed by anger and pain, their capacity for reason and logic diminishes. Family mediators need to appreciate the intensity of the irrational feelings and reactions they see in mediation and to consider their personal impact. Mediators can help to contain family crises by adapting the model and methods of this article to fit different levels and patterns of conflict.
{21} MED: RELATED PROCESSES-GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)
{155} TEACHING

Parrish, David Brainerd. "The Dilemma: Simultaneous Negotiation of Attorney's Fees and Settlement in Class Actions." Houston Law Review; Summer, 1999; 36(2): pp. 531-558.

State courts in Texas and California, and the ninth circuit, have decided simultaneous determination of settlements and legal fees will be reviewed for fairness on a case-by-case basis. The third circuit, however, has found the practice per se improper and legal fees are determined after a court review of the settlement.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD
{138} ETHICS: GENERAL

Paulson, Jan; Rawding, Nigel; Reed, Lucy; Schwartz, Eric. The Freshfields Guide To Arbitration and ADR: Clauses in International Contracts (2d); 1999; pp. 175.
This is a revised, second-edition of the 1993 version. It provides general guidelines for drafting arbitration, mediation, and conciliation clauses for contracts, including choosing the right ADR method, the applicable law, and a place to arbitrate. The manual further provides information regarding standard rules and which of those to choose, as well as a list of various U.S. and international arbitration and dispute resolution centers. Methods for selecting an arbitrator or mediator, etc., are discussed, including how many, independence and neutrality issues, default provisions, and qualifications. Finally, the Appendix includes sample clauses for arbitration, mediation, and conciliation.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{126}REQUIREMENTS: CONTRACTUAL CLAUSES

Personal Injury Institute. Sixth Annual Personal Injury Institute (6th); 1999.
The Personal Injury Institute's publication discusses alternative dispute resolution in the context of personal injury claims. It also addresses settlement tactics, auto law, malpractice suits against HMOs, premises liability, and nursing home neglect.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Ponte, Lucille M. Alternative dispute resolution in business; 1999; pp. 433.
Author examines the use of alternative dispute resolution of business disputes in the United States, including arbitration and awards.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{126}REQUIREMENTS: CONTRACTUAL CLAUSES
{79} SUBJ MATTER: CONSUMER

Ponte, Lucille M.; Brown, Erika M. "Resolving Information Technology Disputes After NAFTA: A Practical Comparison of Domestic and International Arbitration." Tulane Journal of International and Comparitive Law; Spring, 1999; 7: pp. 43-70.

After noting that NAFTA provides no guidance or mechanism for resolving private business disputes between business in Mexico, Canada and the U.S., the author emphasizes the differences between domestic arbitration and international arbitration. These differences include differences in substantive arbitrability, requests for provisional remedies from U.S. courts, limits on discovery, the conduct of arbitration hearings and the nature and enforcement of arbitral awards. The author also comments on how the rules of CAMCA (Commercial Arbitration and Mediation Center for the Americas) apply.
{92} SUBJ MATTER: INT'L

Pope, Sally Ganong and Robert A. Baruch Bush. "Understanding Conflict and Human Capacity." Family and Conciliation Courts Review; January, 2000; 1(38): pp. 41.
In this article the authors examines the foundational values and premises behind the differing views concerning the purpose of mediation. The authors suggest that mediation trainers should teach trainees to identify the premises of the transformative framework to generate a greater appreciation for the opportunities in mediation and in conflict.
{21} MED.: RELATED PROCESSES-GENERAL

Posner, Eric A. "Arbitration and the Harminization of International Commercial Law: A Defense of Mitsubishi." Virginia Journal of International Law; Spring, 1999; 39(3): pp. 647-670.
The author discusses the impact of Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985), upon international arbitration. The holding in Mitsubishi does not emphatically decide whether international arbitration clauses are to be universally enforced, or whether courts will review said clauses de novo.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Prinzivalli, Paul J. "Oneida Land Claims Under Negotiation." New York Law Journal; August, 1999; 222(28): pp. S10.
Paul J. Prinzivalli examines the Oneida Nation's land claim against the State of New York, local authorities, and potential private parties. The Oneida Nation claims that treaties between itself and the State of New York are invalid and seeks to regain ownership over the disputed land. The Oneida Nation is attempting to add 20,000 private property owners as defendants in this action. The issue is whether these property owners can be ejected from the land. The author suggests settlement possibilities. For example, the State could exercise its power of eminent domain and transfer the property from current private owners to the Oneida Nation.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{78} SUBJ MATTER: COMMUNITY

Ramirez, Steven A. "Arbitration and Reform in Private Securities Litigation: Dealing with the Meritorious as well as the Frivolous." William and Mary Law Review; April, 1999; 40(4): pp. 1055.
Author proposes to use arbitration in securities claims to weed out the frivolous claims and allow the meritorious claims to proceed. Article addresses the problems that may arise by implementing arbitration proceedings in resolving securities claims. Unhappy with the Private Securities Litigation Reform Act of 1995, author feels that Congress or the SEC should remedy the problem by implementing an arbitration regime that would require agreements to arbitrate all securities disputes involving publicly-traded companies before a SEC-sponsored forum.
{106} SUBJ MATTER: SECURITIES

Redfern, Alan & Hunter, Martin. Law and Practice of International Commercial Arbitration (3rd); 1999.
The authors discuss the general elements of international arbitration and the laws regulating international commercial arbitration. Among the many topics covered in this book, Redfern and Hunter address jurisdictional issues confronting arbitral tribunals and the proceedings and challenge of arbitration decisions.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL

Reichart, Jennifer L. "Judges should tighten reins in class action litigation, group says." Trial; Jananuary, 2000; 36(1): pp. 104.
The RAND Institute for Civil Justice recently performed a study on the Class Action Dilemma: Pursuing Public Goals for Private Gain. The study concluded that concerns about current class action practices could be cured if judges acted with more social conscious in the regulation of class actions. An important first step in a more socially conscious bench is education. The study suggests that experienced professionals should be used to educate judges on the obligations and powers that judges have in class action litigation.

Reuben, Richard C. "Deconstructing Confidentiality." California Lawyer; January, 2000; 20(1): pp. 29-30.
The Author discusses the recent case of Olam v. Congress Mortgage Co. (ND Cal) 1999 WL 909731, which was the first federal decision concerning California's mediation confidentiality law (Evid C §§703.5, 1119). The decision challenges the confidentiality of mediations.
{21} MED: RELATED PROCESSES-GENERAL
{132} CONFIDENTIALITY
{144} LEGISLATION

Reuben, Richard C. "No Consent, No ADR." California Lawyer; June, 1999; 19(6): pp. 42-44.
The California Supreme Court issued a second important ruling reining in the use of cram-down arbitration provisions in form contracts. The next step may be for the court to hold, once and for all, that arbitration clauses slipped into the boilerplate of standard form contracts are presumptively unenforceable, absent some evidence of actual assent. A bold move perhaps but one that has the benefit of momentum as well as jurisprudential principle.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Riccardi, Michael. "Law Creating Board To Probe Misconduct is Upheld." New York Law Journal; September, 1999; 225(45): pp. 1.
Article examines Manhattan Supreme Court decision holding constitutional the creation of an independent police review board that investigates allegations of police misconduct and oversees the internal affairs division of the NYPD. The Board will have power to assess anti-corruption efforts of the NYPD, through investigation and subsequent recommendation to the executive branch and local prosecutors. Local Law 91 was held constitutional over objection by Mayor Guiliani that it impermissibly infringes upon mayoral appointment power.
{144} LEGISLATION

Riccardi, Michael A. "5th Amendment Does Not Bar An Arbitration." New York Law Journal; August, 1999; 222(38): pp. 1, col 3.
This article describes the result of the case In Matter of Isernio in which the court ruled that arbitration should not be delayed because one of the parties is invoking its fifth amendment privilege against self-incrimination in a related criminal investigation. The Court ruled that there is no obligation to grant a stay when a fifth amendment privilege is exercized. Stays are ordinarily only granted when there is an indictment or prejudice to the party seeking the stay.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{82} SUBJ MATTER: CRIMMINAL

Riccardi, Michael A. "Mandatory Arbitration of Job Bias Claims is Upheld." New York Law Journal; September, 1999; 222(62): pp. 1, col. 3.
The Second Circuit upheld mandatory arbitration of sex discrimination claims under a National Association of Securities Dealers registration agreement in Desiderio v. National Association of Securities Dealers. Ten federal circuit courts, except for the Ninth Circuit, upheld mandatory arbitration of employment discrimination disputes. The Supreme Court declined certiorari in three cases on both sides of the issue; a cert petition is currently pending before the Court. The unanimous Second Circuit panel said that the 1991 Amendments to Title VII of the Civil Rights Act were clear and ambiguous in encouraging the use of arbitration to resolve Title VII claims.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Riccardi, Michael A. "Supreme Court to examine UIM arbitration appeal." Pennsylvania Law Weekly; April, 1999; 22(17): pp. 1.
Article discusses case currently under review by Pennsylvania Supreme Court. The Court is to determine whether uninsured and underinsured motorist insurance arbitrations are governed by common law or the Uniform Arbitration Act. At issue is the court's ability to review facts and law. The Common Pleas Court confirmed the arbitrator's award stating that their purpose was to see if there was fraud, misconduct, or some other common law irregularity and not to determine whether the plaintiff was entitled to arbitrate his dispute. The Superior Court reversed and remanded stating there was no basis for arbitration under the insurance contract.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{91} SUBJ MATTER: INSURANCE

Rodier, Danielle N. "New Test for Reviewing Collective Bargaining Arbitrations: Supreme Court Opinion Attemts to Eliminate Confusion." Pennsylvania Law Weekly; January, 2000; 23(1): pp. 5.
The Article discusses the Pennsylvania State Supreme Court's decision in State System of Higher Education (Cheyney University) v. State College and University Professional Association, PICS Case No. 99-2380 (Pa. Dec. 22, 1999) which developed a two-prong test to decide when a court may review an arbitrator's award concerning a collective bargaining agreement.
{93} SUBJ MATTER: LABOR-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD

Rose, James M. "In Praise of Appraisal: Alternate Dispute Resolution in Action." New York State Bar Journal; Janurary, 2000; 72(1): pp. 56-57.
The use of alternate dispute resolution in criminal courts has increasing in recent years. This article discusses a recent criminal case before Justice Shirley U. Jesstt in the Town Justice Court of New Gomorrah brought to light just how much the law favors alternate dispute resolution.
{82} SUBJ MATTER CRIMINAL

Roy, Daniel. "Mandatory Arbitration of Statutory Claims in the Union Workplace." Indiana Law Journal; Fall, 1999; 74(4): pp. 1347-1374.
This Note looks at the Gardner-Denver and Gilmer decisions. The note concludes that the union status of an employee should not render mandatory arbitration clauses invalid for two reasons: (1) Employees represented by a union are capable of providing consent to such arbitration clauses in the same manner in which non-union employees do, and (2) unionized employees are protected by the duty of fair representation from having their individual interests and rights undermined by the union. Finally, this note explains what

kind of language a union-negotiated mandatory arbitration clause should contain in order to be applied to statutory claims.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Rubino-Summartano, Mauro. "Reconsidering a Key Tenet of International Commercial Arbitration: Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 93-100.
There should be an international convention which nations adhere to so that there is uniformity in the setting aside of arbitral decisions. Also, the merits of an arbitral award should be reviewed because otherwise, we are assuming that arbitrators are infallible. Everyone makes mistakes, and even the decisions of judges are reviewed; arbitrators are not higher than judges. An appeal would slow arbitration down, so a time limit should be set for an appeal.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD

Russell, Richard A. "Economic Mediation Is on the Horizon." New Jersey Law Journal; August, 1999; 157(8): pp. 32.
This article explains the new pilot mediation program for divorce cases instituted by the New Jersey Supreme Court to six counties in New Jersey. The article notes the areas in which mediation will be available to parties. The article discusses benefits (lack of delay to parties) and goals of the program (reduce backlog of cases in certain counties). The article next distinguished between mediation and arbitration, and indicates instances when arbitration would also be helpful.
{21} MED: RELATED PROCESSES-GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Samborn, Hope Viner. "After the Firing: Losing your job can be the beginning of a winning career." ABA Journal; September, 1999; 85 pp. 84-86.
Associates often see the signs of their imminent termination. Instead of ignoring the warnings in the mistaken belief that they can mend things, they should stop accepting assignments and should invest in their future by searching for a new job. In addition to asking for severance, health benefits, and time, fired associates should negotiate with the firm for services such as career counseling and outplacement. Associates might consider volunteering or doing temporary legal work to advance their career goals and keep their skills sharp. Also, always keep in mind that networking works.
{96} SUBJ: MATTER: EMPLOYMENT (NON UNIONS)

Saunders, Kurt. "Bucket Bargaining: Best Process in Interest Based Bargaining." Labor Law Journal; Summer, 1999; 50(2): pp. 83-96.

This article demonstrates the challenges of the step-one premise and introduces the reader to the bucket bargaining design. In doing so, the article demonstrates that when parties apply the bargaining design, they receive the design's promised benefits. To accomplish this end, the article discusses major issues that surface in bucket bargaining. Additionally, it describes the three steps of the bucket bargaining model. Screening evaluates issues, such as redesign. Employing concepts such as update and repair, bucket bargaining characterizes the bargaining process in outline form. Final reconciliation offers strategies to bring closure to the all issues presented.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

Schacher, Yael. "Advocates Claim Dispute Hearings for Welfare Benefits are Unfair." New York Law Journal; November, 1999; 222(93): pp. 1.
Mandatory Dispute Resolution (MDR), a New York City pilot program, has LEGAL AID lawyers and welfare advocates in an uproar. Pursuant to this program, public assistance recipients who have requested fair hearings to contest benefit reductions are now required to attend pre-hearing arbitration interviews in an effort to resolve disputes early and prevent fraudulent claims. Opponents, however, argue that, with the threat of evidence preclusion and case closure for failure to comply, MDR illegally forces recipients to decide between fair hearing rights and their allotted benefits. A class action suit has been filed.
{147} POWER IMBALANCE

Schepard, Andrew. "Model Standards of Practice for Divorce and Family Mediators." Family and Conciliation Courts Review; January, 2000; 38(1): pp. 106-122.
Author describes both the development and purpose of the Model Standards of Practice for Divorce and Family Mediation.
{74} SUBJ MATTER: GENERAL

Schlam, Peter R. & Harvey M. Stone. "Prosecutor's Improper Summation; Sealing of Arbitration Awards." New York Law Journal; November, 1999; 222(94): pp. 3.
This article reports on several recent decisions by the U.S. District Court for the Eastern District of New York. Of particular importance to the ADR field is the decision in In the Matter of the Application of [Sealed] to Confirm and Enforce an International Arbitral Award. Here, the court held that although settlement documents were sealed in the present action, the court would not necessarily agree to such sealing in future cases. The court reasoned that because court records are open for public inspection, an agreement to secrecy in an arbitration proceeding would not automatically apply in a judicial forum.
{132} CONFIDENTIALITY

Schlissel, Stephen W. "Making Divorce, Separation Process Less Acrimonious." New York Law Journal; July, 1999; 222(3): pp. 9.
Courts today are overrun with separating and divorcing spouses. This article reviews a number of programs designed to provide a speedier alternative to adversarial litigation and to minimize the effects of divorce upon the family. Parent Education Programs educate spouses about the separation and divorce process so they can enforce their rights with less acrimony and more intelligence. Early Neutral Evaluations are designed to encourage communication and agreement between the parties and resolve the case in its pre-trial stages. And finally, Arbitration is an alternative to the delays and setbacks encountered in court appearances.
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

Schwartz, Kenneth D. "Wright v. Universal Maritime Service Corp.: the Supreme Court Goes Back to Arbitration Basics." Employee Relations Law Journal; Spring, 1999; 24(4): pp. 75-89.
In Wright, the Supreme Court held that employers do not have to arbitrate their statutory disability discrimination claims under a general arbitration clause in a collective bargaining agreement. An agreement must clearly state that statutory discrimination claims are subject to arbitration in order to waive an individual's rights to proceed to court. It is not clear whether a union can waive an individual's right to go to court for a discrimination claim.
{94} SUBJ MATTER: LABOR-DISCRIMINATION
{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Senter, David A. & Andrew L. Chapin. "Statutory Grounds for Challenging Arbitration Awards." Construction Lawyer; October, 1999; 19(4): pp. 30-36.
An arbitration award can be challenged either under the Federal Arbitration Act (FAA) or the Uniform Arbitration Act (UAA). Both are virtually identical in its provisions, but it is the latter one that has been adopted by most states. Courts are generally disinclined to vacate arbitration awards, doing so in only approximately 10 percent of cases that have been challenged under the FAA. With a deferential standard of review used by reviewing courts, awards are rarely vacated unless the arbitrator has demonstrated conduct close to fraud. Thus, mistakes in interpretation of fact of law are not grounds for vacating an award.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{80} SUBJ MATTER: CONSTRUCTION

Shapiro, David. "Pushing the envelope - selective techniques in tough mediations (Part 2)." Solicitors Journal; September, 1999; 143(36): pp. 886-887.
Author discusses experienced mediators' use of going for the bottom line, the necessity of opening statements, the benefits of challenge mediations and the practice of stopping the mediation. He contends that engaging in challenge mediation encourages the participants to gravitate toward a particular solution while going for the bottom line discourages positional bargaining. He further concludes that potential for abuse in the mediation process can often be curbed by a mediator's refusal to participate in the game.
{21} MED: RELATED PROCESSES - GENERAL

Shapiro, David. "Pushing the Envelope - Selective Techniques in Tough Mediations (Part 1)." Solicitors Journal; September, 1999; 143(35): pp. 852-853.
With the adoption of CPR 26.4 on 26 April 1999, more and more litigants are opting for mediation instead of the traditional methods of dispute resolution, such as litigation or arbitration. Yet, few lawyers and even fewer clients know anything about individual mediators and their different approaches to the mediation process. This article lists some of the techniques employed by certain mediators. The author shares his experience as a mediator in the first of two articles.
{21} MED: RELATED PROCESSES-GENERAL

Shattuck, John. "Preventing Genocide: Justice and Conflict Resolution in the Post-Cold War World." Hofstra Law & Policy Symposium; Annual, 1999; 3(Annual): pp. 15-25.
This article expresses the opinion that the end of the Cold War presented us with a host of problems involving ethnic, religious and other forms of group conflict. Specifically, these situations involve cynical leaders who exploit extreme nationalism, weak or corrupt government institutions, and the absence of legal institutions capable of making power accountable. The author proposes a strategy to prevent such genocide and crimes against humanity. There are three broad elements to this strategy: (1) early warning and prevention, (2) active intervention, & (3) justice and the rule of law.
{134} DISPUTE PREVENTION

Shattuck, John. "From Nuremburgh to Dayton and Beyond: The Struggle for Peace with Justice in Bosnia." Hofstra Law & Policy Symposium; Annual, 1999; 3(Annual): pp. 27-35.
The Dayton Accords may come to serve as a model for ending future conflicts. They emphasize that human rights violations are central to the origins and solutions of the conflict in Bosnia. They establish the reach of transitional justice and accountability in structuring the Bosnian peace. A

lesson from Bosnia is that justice and peace must be pursued simultaneously. These Accords are a sign that the international community is beginning to create means of enforcing basic standards of humanitarian behavior.
{92} SUBJ MATTER: INT'L

Shillito, Richard. "Mediation in Libel Actions." New Law Journal; February, 2000; 150(6921): pp. 122.
Recent experience suggest that in some libel actions, mediation may be worth exploring. Mediation may have problems succeeding in libel actions because unlike a straightforward contract claim, there is more at stake than merely money. It may be that one party is chiefly concerned to procure a published correction and apology.
{21} MED: RELATED PROCESSES-GENERAL

Simoisi, Maria and Allen, Peter T. "Public Perception of risk Management in Environmental Controversies: A U.K. Study." Risk: Health, Safety and Environment; Fall 1998; 9(4): pp. 309-327.
An optimal level of conflict spurs social change, while too much conflict is dysfunctional. It is crucial to consider the course of a conflict over time to understand how to effectively resolve it. The West Wood controversy analyzed the evolution of an environmental dispute in an attempt to find a resolution.
{84} SUBJ MATTER: ENVIRONMENT

Smid, Jakob S. "Reconsidering a Key Tenet of International Commercial Arbitration: Is Finality of Awards What Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 71-74.
A new international convention regarding the setting aside of arbitral decisions might not be feasible because it would be difficult to get the political agreement to create it. There could also be a problem if some states choose to follow the new convention, and some do not. This needs to be explored. Also, must ask the users of arbitration if they want an appellate level. Some may want it to prevent error, and some may not because speed in resolving disputes will be lost.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD

Smit, H.; V. Pechota. Commercial Arbitration: An International Bibliography (2d); 1999; pp. 752.
This book is a comprehensive bibliography of commercial arbitration in the international setting. Its purpose is to assist the finding of relevant titles throughout volumes of literature on the subject. While the focus of sources is from the English language, other languages are represented. The entries are arranged according both to subject matter and geographically. Articles

included in this volume date through the end of 1996 and the beginning of 1997.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L

Smit, Hans; Pechota, Vratislav. Arbitration Rules Issued by International Institutions (2d); 1999.
Looseleaf guide (Unit 2 in Smit's 8-part Guides to International Arbitration Series) provides background information, as well as the text of applicable arbitration rules (supplemented by commentary) from several international locations. Included within the text are the UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules, Arbitration Rules for the United Nations Economic Commission on Europe, the International Chamber of Commerce Rules of Arbitration, as well as rules from the London Court of International Arbitration, the World Intellectual Property Organization (WIPO), the Inter-American Commercial Arbitration Commission, the North American Trade Dispute Resolution Center, and more.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{92} SUBJ MATTER: INT'L

Smith, Robert. "Mediation Musings." California Lawyer; September, 1999; 19(9): pp. 23-24.
Author discusses the importance of utilizing mediation as an ADR mechanism in both the United States and United Kingdom. Author acknowledges the scarcity of instances in which mediation is used, but advocates that mediation can indeed be a useful and efficient tool in resolving disputes. Author further points out that mediation and arbitration have very little in common, and as such, neutrals should not be presiding over both types of resolution. Author concludes that, while mediation rules have been added in London, use of mediation must expand and be used more frequently internationally.
{21} MED.: RELATED PROCESSES-GENERAL

Smith, Robert M. "A Meditation on Mediation." California Lawyer; June, 1999; 19(6): pp. 33-34.
Smith reflects on two mediations that made him re-think the genre of transformative mediation. A transformative mediation process allows the parties to shift their perspectives and bring about a change in their relationship. The focus is on the relationship between the parties--restoring and repairing for the purpose of continuing the relationship. He also commented that Y2K problem and its global nature may lead to some innovative transnational mediation.

{21} MED.: RELATED PROCESSES-GENERAL

Smith, William C. "Taking the Fast Track to 2000: An ADR provider steps in to hurry resolution of Y2K disputes." ABA Journal; June, 1999; 85: pp. 80-81.
The American Arbitration Association has introduced fast track procedures for Y2K claims. The program responds to time pressures inherent in Y2K disputes. Author also discusses current legislative fixes under consideration for resolving Y2K disputes.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{144} LEGISLATION

Sobel, Arthur H. & Burke, Jean E. "Realize Mediation's Unique Potential." New York Law Journal; February, 2000; 223(29): pp. s3.
Four Years ago, NASD Regulation, Inc. began offering mediation to resolve some of the thousands of securities disputes that are filed with the National Association of Securities Dealers which otherwise would have been decided through binding arbitration. Of the more than 3,000 cases that have been submitted to mediation with the NASD, 80 percent settled successfully.
{21} MED: RELATED PROCESSES-GENERAL

Sochynsky, Yaroslav. "Effective Mediation." New York Law Journal; November, 1999; 222(89): pp. 3.
Drawing from his involvement in over 300 mediations in the fields of business, technology, and employment disputes, the author provides practical advice for litigators on both sides of the mediation process. Litigators are reminded of key differences in mediation and litigation that need be addressed by them and their clients prior to and during mediation. Some areas of concern include careful preparation by the attorney, care in selecting the mediator, preparing the client for what to expect, reviewing expectations of confidentiality with the mediator, and drafting a settlement agreement prior to the mediation.
{21} MED: RELATED PROCESSES-GENERAL
{151} ROLE OF LAWYERS

Solovay, Norman. Alternative Dispute Resolution; 1999.
Book addresses multiple issues, including preliminary considerations in deciding whether to mediate or arbitrate, selecting a mediator and establishing ground rules, the mediation process, legal concerns and the proposed uniform mediation law, drafting the arbitration agreement, enforcing the arbitration agreement, commencing arbitration, pre-hearing procedures, conduct of the arbitration, the arbitral award, and international arbitration.
{134} DISPUTE PREVENTION

Spencer, Beverley. "Legal Update: Alternative Dispute Resolution." Canadian Lawyer; May, 1999; 23(5): pp. 33-44.
Legal update stating that lawyers' worries that ADR will reduce business are unfounded, and that studies show that the reverse is true. Most cases will settle, but ADR helps them settle much earlier, before the clients have spent large sums of money, and therefore client are more pleased with their legal services. Suggestions for identifying disputes appropriate for mediation and ways in which lawyers can make mediation successful. A ten step process is described that instructs lawyers how to handle disputes that go to mediation. Also discussed, recent Canadian laws incorporating mediation as a solution to disputes.
{21} MED: RELATED PROCESSES-GENERAL
{151} ROLE OF LAWYERS
{133} COURT REFORMS TO ACCOMMODATE DISPUTE RESOLUTION PROCESS

Spero, Nancy E. "The seven dos and don'ts of mediation." California Lawyer; June, 1999; 19(6): pp. 29-30.
Author provides advice on how to maximize the results of a mediation while avoiding common mistakes. Among the highlights: Plan your goals; be a zealous advocate; plan for the worst; allow enough time; include the key people; consider the adversary's position; and look for unstated agendas.
{21} MED: RELATED PROCESSES-GENERAL

Stewart, C. Evan. "The Judiciary's Increased Role in Reviewing Arbitration Awards." New York Law Journal; January, 2000; 223(19): pp. 1.
Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker established that arbitration awards were not allowed to be vacated where the governing legal principle was complex and subject to varying interpretations. Awards were final as long as the arbitrators did not show a "manifest disregard of the law." This standard was criticized as providing parties with little guarantee in protecting their legal rights. Thus, the Second Circuit, in Halligan v. Piper Jaffray, in an effort to provide a more certain standard of review, reversed an arbitration award and held that a lack of explanation by the arbitrators in the issuance of the award may also be a factor demonstrating "manifest disregard." The new standard was immediately applied in Daily New L.P. v. Newspaper & Mail Deliverers' Union of New York.
{44} ARB: MANDATORY, COURT-ANNEXED-GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT AWARD

Stipanowich, Thomas J., et al. "Mediation in Kentucky: Four Perspectives." Kentucky Bench and Bar; September, 1999; 63(5): pp. 6-12.
Understanding mediation's dynamics, strengths and limitations is an essential qualification for law practice. Four current and recently graduated law

students provide their perspective of mediation through first-hand observation and participation. Mitchell discusses the current proposed rule to establish a framework for court-connected mediation. Turner discusses the various styles and strategies of mediators and how knowing these styles leads to effective advocacy in lawyers. Smith examines the mediation program in Eastern Kentucky. Banister reviews the establishment of a mediation program by the Natural Resources and Environmental Protection Cabinet.
{21} MED: RELATED PROCESSES-GENERAL

Stratton, Sheryl. "Construction Allowance Rules Will Be Modified." Tax Notes; January, 24; 86(4): pp. 458-59.
The IRS proposed regulations allowing lessees in a short-term lease of retail space to exclude from income the construction allowances used to construct qualified long-term real property. Of concern is the requirement that the lease agreement "expressly provide" that the construction allowance is for the purpose of constructing or improving qualified long-term real property. If necessary, the provision should be satisfied by allowing reimbursement for the lessee's previously incurred costs for the construction. Otherwise, critics at the hearing regarding the proposed regulations state that the standard burdens lessees' ability to negotiate a lease that contains the exact language in order to satisfy the requirement. The regulations will be modified based on some of the concerns voiced at the hearing.
{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL
{80} SUBJ MATTER: CONSTRUCTION
{144} LEGISLATION

Stratton, Sheryl. "IRS Appeals Working to Streamline the Process." Tax Notes; June, 1999; 83(12): pp. 1694-1695.
The mediation program of the IRS Appeals division has had twenty-eight requests to date, of which 6 cases have been successfully negotiated and three have not. Of the remaining cases, ten are currently in progress and nine were rejected because they did not meet the criteria. The IRS urges requests even for cases that do not meet the $1 million threshold.
{108} SUBJ MATTER: TAX

Sturner, Jan William. "Arbitration, Labor Contracts and the ADA: The Benefits of Pre-dispute Arbitration Agreements and an Update on the Conflict between the Duty to Accommodate and Seniority Rights." University of Arkansas at Little Rock Law Review; Spring, 1999; 21(3): pp. 455-518.
This article discusses the Americans with Disabilities Act, focusing on the fact that Congress intended ADR techniques to be used for ADA claims, since ADR techniques are more flexible, practical and expedient and preserve resources and relationships. The Act tells arbitrators to pay particular attention to how the law and the law of the shop interact. The

author ultimately concludes that the legal community should support mandatory and binding arbitration.
{94} SUBJ MATTER: LABOR-DISCRIMINATION

Taldone, Nicholas J. "Winning Mediation Strategies." The Trial Lawyer; May-June, 1999; 22(3): pp. 190-196.
Suggesting that mediation should be proposed even when not required and identifying effective practices to include utilizing a premediation conference to establish logistics, preparing clients for the process and reviewing the methodology of mediation, using position statements, settlement proposals and the mediation opening statement to maintain a conciliatory atmosphere, and taking a proactive approach by being critical of, rather than simply relying on, the mediator in moving toward a result which is both reasonable and acceptable to all parties.
{21} MED: RELATED PROCESSES-GENERAL

Tao, Jingzhou. "Modification to CIETAC's Rules." International Business Lawyer; October, 1999; 27(9): pp. 394-397.
The China International Economic and Trade Arbitration Commission (CIETAC) modified its Arbitration Rules for the second time in only five years in an effort to maintain its preeminent position in the arbitration of foreign disputes. The modification was made in reaction to emerging competition resulting from the extension of jurisdiction for domestic arbitration commissions to include foreign -related disputes. Before the extension of jurisdiction, arbitration of foreign -related disputes was an area exclusively governed by the CIETAC. The changes made in this most recent modification of the CIETAC are four- fold affecting 1) Arbitration matters under CIETAC's jurisdiction, 2) Procedural Rules to be applied in arbitration proceedings, 3) Property and evidence preservation measures, and; 4) Dissenting opinions. Whether these changes will be effective remains to be seen and in a large part depends on how the changes are interpreted by the Chinese Courts.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L
{76} SUBJ MATTER: COMMERCIAL

The Committee on the Civil Court. "A Proposal to Expand the Use of the Compulsory Arbitration Program in the Civil Court of the City of New York." The Record of the Association of the Bar of the City of New York; September, 1999; 54(5): pp. 670-680.
Committee conducted investigation to see if the compulsory arbitration program in use in New York County should be expanded to Kings and Bronx Counties to help alleviate the heavy trial calendars and delays in getting cases to trial there. The arbitration program in New York County has

continued to siphon off a small but significant amount of cases that otherwise would have been calendared for trial. IN New York County, there is a 30-day wait for arbitration compared to a 12-week wait for trial. Committee recommends implementing arbitration program in Kings and Bronx Counties.
{133} COURT REFORM TO ACCOMODATE DISPUTE RESOLUTION PROCESS
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

Thompson, George. "The Changing Family in the New Milennium (The Second Annual Meyer Elkin Address)." Family and Conciliation Courts Review; Jananuary, 2000; 1(38): pp. 10.
The settlement of family disputes has improved significantly over the past few years. One of the most noteworthy accomplishments being the ability to create the right balance between information, services, and support for negotiated decisions that result in a less painful resolution. There are several areas, however, that are still in need of progress. Progress can be made by addressing economic issues with simple answers, providing material to the parties that can easily be understood, and guaranteeing access to skilled mediators to mediate disputes.
{21} MED.: RELATED PROCESSES-GENERAL

Trachtman, Joel P. "The Domain of WTO Dispute Resolution." Harvard International Law Journal; Spring, 1999; 40(2): pp. 333-77.
The author finds the decision-making power of the WTO dispute resolution panel to be too great, in part because the panel lacks direct democratic legitimacy and democratic controls, and also because the panel makes decisions on important issues, such as the relationship between trade and the environment. He goes on to suggest that, in the international trade law system, some of this power should be left to treaty-making, not dispute resolution.
{92} SUBJ MATTER: INT'L

Traw, Kelly. "Proposed Regulations for Grievance Procedures under Employee Benefit Plans." Probate and Property; September, 1999; 13(5): pp. 48-54.
Article examines the U.S. Department of Labor proposed regulations that revise the requirements for grievance and appeal procedures under ERISA. Article focuses on proposed regulations that depart significantly from current law. These include regulations that relate to benefit determinations, appeals of adverse determinations, group health plans, and pension plans. Author also surveys new notice requirements and new standards of review on appeal. Author concludes that these changes can amount to significant changes in current procedure.
{96} SUBJ: MATTER: EMPLOYMENT (NON UNIONS)

Tweeddale, Karen & Andrew Tweeddale. A Practical Approach to Arbitration Law; 1999; pp. 446.
Authors provide a comprehensive look at arbitration law, focusing on the Arbitration Act of 1996, and significant case law, and discussing UNCITRAL rules and the rules of the International Chamber of Commerce. They analyze the arbitration proceedings, including the costs, the arbitration tribunal, the agreement and the award.
{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL
{74} SUBJ MATTER: GENERAL

United Nations. Enforcing Arbitration Awards Under the New York Convention: Experience and Prospects; 1999; pp. 51.
Publication of the United Nations contains papers presented at "New York Convention Day" held in New York on June 10, 1998 to celebrate the 40th anniversary of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The papers review the history of the New York Convention. They consider its objective, its impact on international commercial law, and the prospects for the future.
{76} SUBJ MATTER: COMMERCIAL
{92} SUBJ MATTER: INT'L
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Venkataraman, Arun. "Binational Panels and Multilateral Negotiations: A Two-Track Approach to Limiting Contingent Protection." Columbia Journal of Transnational Law; Spring, 1999; 37(2): pp. 533-621.
This Note examines the effectiveness of Canada's two-track approach to the administration of trade remedy laws (i.e. a binational panel combined with multilateral negotiations). The Author argues that while such a program might confer significant benefits on Canada, it will be less effective for those negotiating with the United States. The author explains how the reform of the World Trade Organization's dispute settlement mechanism will render Canada's approach less effective for the U.S. negotiations after the Uruguay Round.
{92} SUBJ MATTER: INT'L

Wade, John. "Special Issue: Mediation 2000: Training Mediators for the 21st Century Reinventing the Pyramid." Family and Conciliation Courts Review; January, 2000; 1(38): pp. 87-105.
Author describes a teaching and learning process known as the pyramid; he draws analogies between the pyramid process and mediation and advocates use of the pyramid process in mediations.
{21} MED: RELATED PROCESSES-GENERAL

Walker, George K. "State Rules for Arbitrator Ethics." Journal of the Legal Profession; Spring 1999; 23(1): pp. 155-196.
The author introduces each Canon (I-VIII) within the text; the Canons are also reprinted at the end of the article as an appendix.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{144} LEGISLATION

Warns, Carl A. Resolution of labor and employment disputes: the choice of process in the 1990s and beyond: June 1-2, 1995 (1st); 1999; pp. 375.
Author addresses resolution of labor and employment disputes, including arbitration, mediation and conciliation in labor disputer and labor laws legislation.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{38} MED: NON-BINDING RECOMMENDATION PROC-GENERAL PROC EARLY NEUTRAL EVAL
{93} SUBJ MATTER: LABOR - GENERAL

Washington, Monica J. "Compulsory arbitration of statutory employment disputes: judicial review without judicial reformation." New York University Law Review; June, 1999; 74(3): pp. 844-886.
Article claims compulsory arbitration decisions in statutory employment disputes should be subjected to closer judicial scrutiny than currently permitted by law in order to ensure an impartial arbitration process. The article then examines current practices under statutory and common law and the need for the protection of these rights. Next, the legislative history of the Civil Rights Act of 1991 and recent appellate decisions are examined. Finally, the author describes how a heightened review might lead to increased protection of statutory rights, but may require legislative amendment.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{126}REQUIREMENTS: CONTRACTUAL CLAUSES
{93} SUBJ MATTER: LABOR - GENERAL

Weinstein, Jeffrey. "Common Sense Strategies to avoid Construction Litigation." The Practical Real Estate Lawyer; Janurary, 2000; 16(1): pp. 29-32.
Sophisticated owners, developers, contractors, and architects realize that disputes can be avoided or minimized by employing several key strategies in the early stages of a project. These strategies require decision makers to use equal parts of technical expertise, management, and communication. The article provides tips for avoiding construction litigation both in management process and construction process. It also recommends some common sense strategies to avoid construction litigation.
{80} SUBJ MATTER: CONSTRUCTION

Weinstein, Martha. "Mediation: Fulfilling the Promise of Democracy." Florida Bar Journal; January, 2000; 74(1): pp. 35-37.
The author explores the connections between mediation and democracy. Mediation instills public trust and confidence. A case study of a community mediation involving racism is described.
{21} MED: RELATED PROCESSES-GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Wenzel, Kris. "Lawyer Dispute Resolution Programs: What Are They & How Do They Work?" GP Solo & Small Firm Section; January, 2000; 17(1): pp. 42-43.
Article suggests various uses for lawyer dispute resolution programs, particularly in the context of law firm dissolution. The author provides a detailed description of the steps involved in a typical lawyer dispute resolution program.
{74} SUBJ MATTER: GENERAL

Werner, Jacques. "Arbitration of Sports-Related Disputes." Journal of International Arbitration; March, 1999; 16(1): pp. 116.
This book review begins with examining the roles of arbitration institutions and their purposes in Europe. It states that in the past they existed to settle commodities disputes, then faded for a period, and emerged again in the past several years to settle special subject mettered disputes. One of these specialized arbitration centers is the Court of Arbitration for Sport which started in 1983 at the prompting of the International Olympics Committee in Switzerland. This arbitration center solves sports- related disputes- contract disputes with major events or challenges of decisions made by sports bodies. The Swiss Arbitration Association devoted its arbitration conference in January 1998 to get to know better the Court of Arbitration for Sports.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL
{92} SUBJ MATTER: INT'L
{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT

Werner, Jacques. "Introduction. Reconsidering a Key TenetofInternational Commercial Arbitration: If Finality of Awards what Parties Really Need? Has the Time of an International Appellate Arbitral Body Arrived?" Journal of International Arbitration; March, 1999; 16(1): pp. 155.
In New Trends in Egyptian Arbitration Law, provisions in Egyptian arbitration law are discussed. In the field of international arbitration, the Egyptian legislature has taken a pro-active stance in implementing provisions for resolving disputes. Egypt has been at the forefront of international commercial arbitration practice, and has enacted broadly based and generally applicable laws to respond to the resolution of disputes. The Arbitration Law

considers economic transactions subject to a foreign law or international convention.
{44}ARB: MANDATORY, COURT-ANNEXED-GENERAL

Werner, Jacques. "Improving International Arbitration: The Need for Speed and Trust, Liber Amicorum MichelGaudet (Review)." Journal of International Arbitration; March, 1999; 16(1): pp. 57-61.
This book review briefly discusses the contributions of Michael Gaudet to the process of international arbitration methods. The theme stressed was the necessity of speed and ability to maintain a quality arbitration scheme. Indicative of this was the introduction of a two and half week proceeding of international arbitration that was a success not only through resolving disputes, but instituting an efficient means of resolution. Various opinions on the effectiveness and necessity of this new method are included. Views range from the need for greater productivity in the field of international arbitration, to the importance of providing individual treatment to each case in order to provide the most accurate response given the circumstances. Arbitration practitioners comment on the importance of international arbitration and its increasing accessibility.
{92} SUBJ MATTER: INT'L

Wilbers, Erik. "On-line arbitration of electronic commerce disputes." International Business Lawyer; June, 1999; 27(6): pp. 273-274.
Author explores the possibility that on-line dispute arbitration may soon be the preferential forum in which parties settle disputes. The primary advantages of an electronic interface for solving disputes include international access, increased speed and efficiency at a lower cost, and 24-hour access to automated documents. WIPO Arbitration and Mediation Center in Geneva is in the final stages of developing such a system and expects to administer commercial disputes involving intellectual property.
{105} SUBJ MATTER: SCIENCE & TECHNOLOGY
{92} SUBJ MATTER: INT'L

Wolff, Aaron S. "Use of Incognito Testimony of a Non-Employee Witness in a Discharge for Conduct Arbitration." Labor Law Journal; March, 1999; 50(1): pp. 58-64.
Aaron S. Wolff discusses employee discharges based on the testimony of non-employee witnesses whose identity is concealed by the employer. Although the opposing party receives an opportunity to question the witness, the author argues that such arbitration proceedings violate due process and result in unfair discharges.
{44} ARB: MANDATORY, COURT ANNEXED-GENERAL
{132} CONFIDENTIALITY

Zweibel, Ellen. "Where Does ADR Fit in the Mainstream of Law School Curriculum." Windsor Yearbook of Access to Justice; Annual, 1999; (17): pp. 295-303.
This article discusses a mandatory ADR program for the first year law students at the University of Ottawa. The program, the First Year Conflict Resolution Program, is in response to Canadian courts requiring mediation before trial. The program integrates dispute resolution in the first year contracts and property classes. It is over the course of one week in place of the regularly scheduled first year classes. Local practitioners, in conjunction with the law school faculty, teach the students problem solving skills and the ability to facilitate conflict resolution.
{83} SUBJ MATTER: EDUCATION

Zwetkoff, Catherine. "Mediation in Environmental Conflicts: The Belgian Methodology." Risk, Health, Safety & Environment; Fall, 1999; 9(4): pp. 361-377.
This paper is an analysis of the mediation program applied to environmental conflicts in Walloonia, the French-speaking part of Belgium. It focuses on Espace Environment, a network of ecological associations that introduced mediation to Belgium in the 1980's. Specifically, this paper centers around two main inquiries: (1) are the Espace Environment guidelines consistent with the stated goals, & (2) how does mediation compare with conventional approaches in terms of social legitimacy and perceived effectiveness.
{84} SUBJ MATTER: ENVIRONMENT