MOSTEN'S TOOLBOX TO BUILD AGREEMENTS
(Partial List)

Ten Step Tool-Box Approach

1. Acquire the Tools
2. Organize Your Tools and Know What Tools You Have;
3. Learn When and How to Use Each Tool
4. Practice Using Your Tools
5. Design Your Agreement Process
6. Plan Your Strategies to Implement Your Design
7. Execute Your Strategies
8. Experiment With Your tools
9. Monitor Your Progress
10. Reflect on What You Have Done Well and What You Could Do Better Next Time

TOOLS AND STRATEGIES

1. Spectrum of Primary Dispute Resolution Models (compare with ADR and CDR)
2. Criteria for Comparison of Dispute Resolution Models
3. Developing a Lawyering Signature at the Negotiation Table
4. Unbundling Concepts and Innovative Lawyering Roles
5. Client Education Strategies
6. Theory-Strategy-Intervention-Reflection (Lang-Shoen Model): Think about your goal (what you want to accomplish through your strategy), determine what you want to say (or do), and then say it or do it in the most effective way
7. Strategy Planning Memo
8. Intervention Planning Worksheet
9. Impact of Structure on Negotiation Behavior
10. Symbiotic Impact between Lawyers and Clients
11. Conflict as An Opportunity
12. Awareness that Old Ways and Current Position Are Not Working
13. Commitment to Try New Way
14. Baby Steps Toward Agreement
15. Interdependence of Parties
16. Structured Ventilation
17. Internal Movement of One Party
18. Avoid Negotiating Beliefs and Values
19. Creating Doubt and Dissonance
20. Mythology of Court Process
21. Courthouse Field Trip
22. Two Set of Proposals to Create Priorities

23. Bread-Cake-Frosting to Create Priorities

24. Expert as Consultant

25. Expert as Reporter

26. Expert as Co-Mediator

27. Expert for Confidential Mini-Evaluation

28. Protocol for Admissible Mini-Evaluation

29. Required Return to Mediation or Collaborative Process after Expert Evaluation or Court Hearing

30. Provide Statutes, Cases, and Articles to Parties

31. Develop a Range of Outcomes in Conveying Legal and Financial Data

32. Build Agreements Rather Than Negotiate Positions

33. Emotional Interest Based Strategies to Diffuse Financial Issues

34. Normalcy and Solvability

35. Identify Positions

36. Dig for Interests

37. Find Commonality of Interests

38. BATNA, WATNA, MLATNA

39. Use of Summary Letters

40. Preliminary Private Planning Meetings

41. Consultation with Litigator during Collaborative Process

42. Reframing: Agenda Issue to be Decided, Substantive Issue, Emotional Content, Underlying Interest

43. Presentation of Info by Parties (Flipchart or Power Point)

44. Joint Sessions Between—Benefits-Downsides

45. Caucuses—Benefits-Downsides

46. Transition to Caucuses

47. Balancing Caucuses

48. De-Position with Positive Self-Interest

49. Self-Confrontation

50. Self-Soothing

51. Changing Perceptions of a Gap of Positions

52. Party/Attorney Presentation of Offers in Mediation

53. Christopher Moore's Pizza of Sources of Conflict

    a. Data

    b. Relationships

    c. Structural

    d. Interest

54. Experiment with temporary agreements

55. Use of Homework

56. Use of Children's Retrospective View of How Parents Handle Divorce

57. Use Discussion of Benefits of Process

58. Stop –Go to Another Topic

59. Suspend Meetings

60. Reformat Structure

61. Use of Silence—Sit Back—Make Parties Work

62. Confront Overconfidence in View of World and that Others Share that View

63. Listen Again

64. Reduce Fear of Compromise of Principle and Integrity

65. Anchor Use First Offer to Anchor the Negotiation

66. Reciprocity—Procedural and Non-Substantive Issues v Deal Points

67. Bias Confirmation

68. Risk Aversion

69. Framing Movement/Concession in Terms of Gain or Loss

70. Pleasing other Professions

71. Agent v Principal Conflict

72. One Large Move v Several Incremental Moves

73. Conditional Offers

74. Single v Multiple Issues

75. Avoid Zero Sum Thinking

76. Separate People from the Problem

77. History of Mediation and Lawyers

78. Benefits of Mediation with and without Attorneys

79. Qualifications of Mediators to Work With Lawyers

80. Qualifications of Lawyers to Serve as Peacemaking Attorney

81. Inviting the Other Party to Mediation or CL (convening)

82. Steps to Setting Up a Mediation/CL Process

83. Roles of Lawyers in Mediation Sessions

84. Avoid myopic limitations to one school of practice or one tool.

85. Mediation/collaborative cheat sheet

86. Building Rapport

87. Completing the Collaborative Participation Agreement/Mediation Contract

88. Solidifying the CL Professional Team

89. Improving Communication of the Parties

90. Developing the Parties' Agreement Readiness

91. Handling Resistance to Agreement Building

92. Managing Overt Conflict Between the Parties

93. Dealing with Impasse, Suspension, or Termination of the Process

94. Drafting the Agreement

95. Closing Sessions

96. Monitoring Post-Agreement Progress of the Parties

97. Preventing Future Conflict

98. Flip Chart – All Purpose Tool

99. Celebrate mini-agreements

100. Confirming agreements previously reached

101. Start with Easy Agreements.

102. Image how children, parents or mentors are viewing the parties

103. How did I do? What went well? How can I improve next time?

104. Each party comments on his/her own behavior

105. Reduce or eliminate blame

106. Look through windshield, not rearview mirror

107. Use "I" statements--.

108. Reflection should be ongoing and gentle.

109. Be easy on yourself, the parties, and your collaborative colleagues, and ask the same from them.

110. Bring Peace Into the Room

111. Focus on the opportunity that you have to make a difference in that client's life Demonstrate respect and compassion for the client's spouse.

112. Maintaining calm and caring for the other spouse

113. Read Aloud the Agreement and Collaborative Guidelines and Principles in Session; Prepare An Estimated Budget of the Costs of the Mediation/CL

114. Jointly Draft and approve summary letters before sending to clients:

115. Seek and Offer Help with Clients and Colleagues:

116. Debrief Regularly

117. Ask, Don't Assume

118. Before reacting or making a demand, ask what the other party's needs and concerns are and fashion communication accordingly.

119. Encourage Acknowledge of the Positives

120. Celebrate Movement

121. Identify and Acknowledge Initial Positions of the Parties:

122. Acknowledge the need for t a new approach to solve the problem:

123. Ask for permission before offering an alternative or suggestion:

124. Use professional articles and research to offer commonality:

125. Explain How Reaching a Settlement Can Accelerate Healing for the Family:

126. Accelerate the pace: more frequent sessions, longer sessions

127. Use of a Global proposal

128. Manage overt conflict between the parties

129. Call Break:

130. Open the Door to Stress Voluntary Nature of Process: Commit to Consult Before Walking Out

131. Bifurcate Divorce Issues

132. Salvage Agreements

133. Plan for Contained Litigation

134. Share Boilerplate Early:

135. Single Text—Track Changes:

136. Future Dispute Resolution Clauses:

137. Special Signing Pens

138. Closing Statements by Parties:

139. Monitoring Post-Agreement Progress of the Parties

140. Follow Up Reminders

141. Asymptomatic Regular Parenting Meetings

142. Periodic Financial Assessments

143. Treat people with potential for growth

144. Help people to wake up to what they already know—touch upon their wisdom

145. Create Connection for Rapport and Emotional Support

146. Lend hopeful energy to heal

147. Contain conflict to enable resolution

148. Prevent conflict from ever arising

149. Encourage Reconciliation after conflict

150. Improve quality of choices of intervention

151. Try to be freed of limiting mindsets and habitual behavior

152. Stress realistic outcomes

153. Connect Individuals, Relationships, and Networks

154. Note anger and defer negotiation

155. Imagine relationship-outcome as might become in the future

156. Vision breaking cycle of conflict

157. Reduce or stop fighting

158. Work toward maximum satisfaction

159. Focus on needs—not just rights

160. Broaden definition of problem

161. Provide conflict wellness check-ups

162. Propose least adversarial option at earliest opportunity

163. Omni partial—be part of conflict yet neutral with personal boundaries

164. Develop genuine relationship with parties to increase rapport

165. Increase mutual respect and shared concern of parties

166. Tap into higher wisdom of parties

167. Utilize a preference for peace

168. Work toward growth and change of all concerned

169. Look to future to cope with change

170. Open hearts of parties to move toward change

171. Move away from egos

172. If stressed, few deep breaths can empty mind and permit new outlook without judging or evaluating

173. Use compassion to see the essential humanity of parties

174. Speaking from center inspires trust and permits others to reflect their own truth

175. Use "altered eye: see people as they were before they were born and make connection on level of humanness

176. Acknowledgment and seeing can bring person beyond narrow confines of story

177. When source of positive sponsorship, can see the specialness and good intentions of people who can act on those intentions more positively

178. Sit with people in grief, loss, or tragedy of a situation

179. Pray or call for guidance for clients brings you in more harmonious relationship with them

180. Silence can focus, either open ended or with specific question

181. Ritual can bring people out of rehearsed or warm story and creates room for something new to emerge—people can speak from the core

182. Ritual: state purpose, choose symbolic object, develop method of enactment, closing ritual and honoring what has taken place

183. Indirect references to healing and forgiveness can have impact on subconscious

184. Describe set of behaviors associated with successful outcomes

185. Describe other parties' success

186. Reinforce importance of peaceful choice as commendable effort toward higher moral ground

187. Point out that by choosing mediation/CL, parties act out unspoken hopes that were once a meaningful relationship

188. Reframe in higher principle or fundamental truths: No life without loss; pain in great teacher, all things change

189. Point out our small experience in relationship to larger order

190. Ask people to answer from their heart

191. Acknowledge loss and ask others to do so

192. Give opportunity to grieve—comment on stages of grieving

193. Pose solution as if feelings of anger, mistrust, did not exist

194. Convey your faith that expects healing: Expectant Faith

195. Recognize and respect the history of the conflict

196. Observe how parties communicate with each other to analyze conflict tendencies and dysfunctional patterns

197. Confidential Mini Evaluation

198. Show commonality of parties and how they are joined at the hip

199. Aspirations can be as important as enforceable agreements

200. Mix and match best of all parties ideas, needs and concerns

201. Test of Agreement: Can You Live With It?

202. Test Assumptions

203. Ground rules against personal attacks

204. Discuss Future Dispute Resolution

205. Separate Advisor from Provider Role in Client Decision Making

206. Make Consensual Dispute Resolution the Last Stop on the Divorce Highway

207. Use least invasive method to preserve client control

208. Providing Detailed Informal Notice of Concerns

209. In Person Meetings in Neutral Venues

210. Probe Legal Soft Spots

211. Mould Hot Facts for Future Planning

212. Lawyers and Mediation rather than Lawyers or Mediation

213. Prevention does not seek an answer—reveals opportunities

214. Predict how people will behave

215. Reveal choices between resolution and transformation without caring which if option is chosen

Glossary

Active listening: The process of picking up another's message and sending it back in a reflective statement that mirrors what you have heard. Active listening responses can mirror both content and feelings. Active listening is important not only to show that you hear and understand another but also to motivate that other person's full expression. (David Binder, Paul Bergman, Susan Price, *Lawyers as Counselors* 52–58 [1991])

Agenda setting: The process of working with clients to determine what issues must be addressed as well as the order in which these issues will be discussed. The order and manner in which issues are discussed is an important tool used by the mediator to minimize dispute and bring about settlement.

Alternative Dispute Resolution: Traditionally viewed as dispute resolution processes used as alternatives to litigation. ADR, which includes negotiation, mediation, arbitration, and various hybrid forms, focuses on new and creative methods to resolve disputes. Today, ADR is institutionalized and incorporated into a variety of court processes.

Arbitration: A dispute resolution procedure, designed by the parties to suit their particular needs, that involves the submission of proof and arguments to a third-party neutral (selected by the parties) who has the power to issue a decision, which can be binding or nonbinding. Generally, arbitration hearings are more informal than court hearings, and the rules of evidence are not strictly applied. (Stephen Goldberg, Frank Sander, Nancy Rogers, *Dispute Resolution: Negotiation, Mediation and Other Processes* 199–200 [1992])

Bargaining range: A field of options, any one of which disputants would prefer to the resulting consequences of terminating negotiations. In the best possible scenario, the parties will have overlapping bargaining ranges so that there are mutually satisfactory solutions or divisions of resources. (Christopher Moore, *The Mediation Process* 219–21 [1986])

Best Alternative to Negotiated Agreement (BATNA): The notion that parties should know the likely results that will occur if they do not negotiate with another person. One who is unaware of the results that could be obtained if negotiations are unsuccessful runs the risk of entering into an unsatisfactory agreement or rejecting a satisfactory agreement. In addition, parties should know as much as possible about the other party's BATNA. (Roger Fisher and William Ury, *Getting to Yes* [1981])

Brainstorming: The process by which ideas are rapidly generated by a group. Brainstorming is often useful because it separates the generation process from evaluation procedures so that the group has multiple options to consider. (Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* 193 [1986])

Breakout rooms: Rooms that are used during mediation for caucuses between parties and the mediator and discussions between clients and their lawyers. Breakout rooms can also provide a place for parties to wait when other discussions and caucuses are taking place. This function is particularly important in the family law context since estranged

spouses are often uncomfortable waiting in the same room. These rooms should be equipped with a telephone that the parties and their lawyers are free to use.

Caucus: Part of the mediation session in which the mediator meets privately with each party or a combination of the parties. To allow parties to be more candid and explore various ideas that they are not comfortable sharing with the other party, caucuses are a very important tool for mediators. In addition, caucuses provide a good opportunity for the mediator to do reality testing with the parties.

Client coach: As part of a client's preparation for negotiations, a lawyer can teach the client some of the essentials of negotiation theory and give supervised individual training to the client in preparation for the mediation session. In addition, the lawyer can help the client assess the strengths and weaknesses of various proposals and help the client develop not only initial proposals but also backup proposals based on anticipated responses.

Co-mediation: Mediation is frequently conducted by interdisciplinary teams, often consisting of therapists along with lawyers. Co-mediation can be effective as a result of the diversity of mediation teams (such as gender, expertise, style). The teams can work together at all times or meet with couples (or individual spouses in caucus) separately.

Comprehensive mediation: Mediation model in which a therapist/mediator works with couples on all issues involved in a family dispute. Issues related to child custody, economic distribution, child support, and alimony are addressed alongside the couple's emotional and conduct issues.

Conciliation: Traditionally used interchangeably with *mediation,* the term usually denotes a process that strives to minimize unnecessary conflict and build a positive psychological relationship between parties. Conciliation is the psychological component of mediation in which the third party attempts to create an atmosphere of trust and cooperation that is conducive to negotiation. (Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflic:* 124 [1986])

Confidentiality: In most jurisdictions, negotiations concerning a disputed legal claim are not admissible in evidence to prove the claim or its amount (*see* Fed. R. Evid. 408 or comparable state rules). The rule results in exclusion of evidence in most, but not all, circumstances. Courts have found several types of evidence outside of the purview of the rule; for example, information that is also requested through the discovery process and negotiations not involving legal claims. (Steven Goldberg, Frank E.A. Sander, and Nancy Rogers, *Dispute Resolution: Negotiation, Mediation, and other Processes* 179–80 [1992])

Confidential Mini-Evaluation (CME): A nonbinding expert's opinion used to defuse custody conflicts when mediation does not resolve the dispute. The CME gives the parties the input of an experienced custody evaluator without the cost, delay, adversarial posturing, and virtually binding decisions of a court-appointed evaluator being imposed on the family and being part of the permanent court record.

Conjoint sessions (*see also co-mediation*)**:** Mediation sessions involving mediation teams that will work together throughout the entire session, including intake, joint sessions, and caucuses. During conjoint sessions, mediation teams, often consisting of lawyers and therapists, do not necessarily retain their separate professional roles.

Consensus building: A mediative process, often used with large groups, involving multiple conflicts. Consensus building often takes place over an extended period of time and is conducive to large public policy disputes, such as disputes involving environmental issues. (Kimberlee K. Kovach, *Mediation: Principles and Practice* 244–45 [1994])

Countertransference (*see also transference*): Countertransference involves not only the professional's distorted perceptions of the client, but also distorted expectations of his or her services and the outcome of those services. (Rhonda Feinberg and James Tom Greene, "Transference and Countertransference Issues in Professional Relationships, *Family Law Quarterly*, Vol 28, Spring 1995, at 111)

Dispute resolution manager: Role played by attorneys that includes educating the client about dispute resolution options both inside the courthouse and in the private sector, helping the client select the appropriate options, and effectively representing the client within that process to obtain settlement.

Early Neutral Evaluation (ENE): A process, designed by federal district courts in northern California, that encourages parties to identify the real areas of agreement and dispute and helps them develop an approach to discovery that would focus promptly on central issues and disclose key evidence. The goal of ENE is to provide parties with an early opportunity to try to negotiate a settlement. (Joshua D. Rosenberg and H. Jay Folberg, *Symposium on Civil Justice Reform: Alternative Dispute Resolution: An Empirical Analysis*, 46 Stan. L. Rev. 1487 [1994])

Flip chart: A large, prominently displayed pad of paper used by the mediator and parties. Flip charts are often used by parties in presenting proposals. Unlike information written on a white board, information on a flip chart can be preserved. In addition, various pages of the flip chart can be posted around a mediation room to serve as a review of previous discussions and/or settlement progress that has been made.

Framing (*see also reframing*): The manner in which a conflict situation, issue, or interest is conceptualized or defined. Individuals generally frame situations according to history and direct experience (subjective reality). (CDR Associates)

Impartiality: The obligation of a mediator to maintain a posture toward parties free from bias or favoritism in either word or action. Impartiality implies a commitment to aid *all parties* in reaching a mutually satisfactory agreement. (Christopher Moore, *Center for Dispute Resolution Code of Professional Conduct* [1982])

Impasse: In mediation, parties often reach a point where they are stuck on particular issues. Often a declaration of a bottom line by the parties does not mean that they are unwilling to move; instead, it is a bargaining strategy. An important skill for mediators involves effectively dealing with situations where an impasse is evident. (Kimberlee Kovach, *Mediation: Principles and Practice* 128–29 [1994])

Interest-based bargaining: Negotiation style focusing on the interests of the parties. Focusing on interests may uncover the existence of mutual or complementary interests that will make agreement possible. Negotiators can seek integrative solutions that meet as many of the needs of both parties as possible. (Roger Fisher and William Ury, *Getting to Yes;* Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* 35 [1986])

Intervention: Words or actions of the mediator that enter into the family system for the purpose of altering the power and dynamics by influencing beliefs or behaviors of individual parties, by providing knowledge or information, or by using a more effective negotiation process and thereby helping participants settle contested issues. (Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 14 [1986])

Judicial case management: Process in which parties voluntarily give a judge all discretion to determine interim orders and amount and order of discovery and to hold settlement conferences. The judge is available to the parties by phone so that emergency court hearings are rarely needed.

Parties waive not only their rights to appeal and other judicial review but also their rights to sue their family lawyers who have consented to the use of the process.

Mandatory mediation: Most jurisdictions have court-annexed mediation programs that generally require participation by litigants. Mediations often take place in the courthouse and may be conducted by court staff mediators, private mediators, or pro bono volunteer lawyers. While child custody and visitation are the issues most often mandated by court-annexed mediation, some court systems provide for mediation of economic issues as well.

Mandatory Settlement Conference (MSC): Procedure by courts that encourages the parties to attempt to settle their case before trial. Generally held within thirty to sixty days of trial dates, MSCs occur at a point when parties are expected to have completed trial preparation.

Med-Arb: Process in which a neutral functions first as a mediator, helping the parties to arrive at a mutually acceptable outcome. If mediation fails, the same neutral then serves as an arbitrator, issuing a final and binding decision. (Stephen Goldberg, Frank E.A. Sander, Nancy Rogers, *Dispute Resolution: Negotiation, Mediation, and Other Processes* 226 [1992])

Mediation: A process by which a third-party neutral facilitates parties in resolving a dispute. The role of the mediator is to facilitate communications between the parties, assist them in focusing on the real issues of the dispute, and generate options for settlement. The goal of mediation is that the parties themselves arrive at a mutually acceptable resolution of the dispute. (Kimberlee Kovach, *Mediation: Principles and Practice* 17 [1994])

Mediation brief: Generally used for single-session mediations, briefs are written for the purpose of educating and persuading the other spouse about a party's interests and goals. Briefs must be researched and drafted carefully to be used as a tool of persuasion.

Multisession mediation: Mediation model in which participants work out a schedule of mediation sessions ranging from one-half hour to four hours in length. The goal for each session is to accomplish as much as possible with the understanding that the parties will continue meeting until all of the issues have been resolved.

One-issue mediation: Issues often arise in mediation that require experts from another field. These experts are brought in to mediate a single issue. For example, a real estate broker can be brought in to help the parties determine the fair market value of a house.

Positional bargaining (*see also zero-sum game*): Negotiation style based on a perception that contested resources are limited and a distributive solution, one that allocates shares of gains and losses to each party, is the only solution. (Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* 35 [1988])

Power imbalance: In many instances, an imbalance of power between the parties might bring about an unfair result. Because mediation lacks many of the formalities and safeguards of adjudication, there is a concern that, as a result of gender, cultural, and racial differences of participants, certain parties may have unfair advantages in the mediation process. In light of the mediator's role as a neutral, the extent to which mediators should address these power imbalances is unclear. (Trina Grillo, *The Mediation Alternative*, 100 Yale L. J. 1545 [1991])

Preliminary joint session: The most common format of mediation involves the parties initially meeting jointly with the mediator. The rationale behind preliminary joint sessions is to make both parties feel part of the process, to create or reinforce trust in the mediator that there will be no

secret or hidden agendas, and to show the parties that they can negotiate directly with one another.

Preventive mediation: The use of mediation in preventing future conflict. It can be used in the divorce context to educate both parties (and their lawyers) as to how to avoid future problems, not just with each other, after the judgment is entered. Preventive mediation can be especially useful in sparing family members (especially children) future conflict and pain if either spouse breaks up with a new romantic partner.

Reality testing: The role of the mediator in working with the parties to assess the realistic possibility of attaining what they are hoping for. Because reality testing often involves issues that are sensitive or personal to the parties, the mediator should usually do reality testing in private caucuses. (Kimberlee Kovach, *Mediation: Principles and Practice* 166–68 [1994])

Reframing (*see also framing*): The process of changing how a person or a party to a conflict conceptualizes his or her own or another's attitudes, behaviors, issues, or interests; or how the structure of a situation is defined. Reframing can be used to identify underlying interests; make a transition from positional to interest-based bargaining; soften or harden demands, modify timing or deadlines, decrease or enhance the explicitness of threats, remove emotions from communications, and remove value-laden language from communications. (CDR Associates)

Settlement weeks: A court system's attempt to maximize judicial and volunteer lawyer resources to resolve outstanding cases through mediation and other settlement procedures.

Simulated coaching: As part of preparing a client for mediation, a lawyer can help clients by practicing several scenarios of issues likely to be raised in mediation. As a result of these simulations, the client receives an orientation about possibilities and an early reality check. In addition, simulations increase the client comfort level in the actual mediation.

Single-session mediation: Mediation model in which parties, counsel, and mediator attempt to reach agreement in a single session. As a result of impasse or other issues that block progress single-session mediations often must adjourn with a set date agreed on to continue the mediation.

Summary letter of mediation sessions: Correspondence initiated by the mediator to parties, counsel, and other authorized persons (accountants, therapists, et al.) to set forth agreements made, areas of disagreement, agenda, assignments of parties, and observations of the mediator to facilitate the process.

Transference (*see also countertransference*): A client's distortions in professional relationships where the client has expectations not grounded in current reality but on past personal history, self-image, adopted role in life, naive hopes and expectations of a fairy-tale outcome of self-validation, or perhaps a self-fulfilling prophecy of defeat. (Rhonda Feinberg and James Tom Greene, "Transference and Countertransference Issues of Professional Relationships, *Family Law Quarterly*, Vol 29, Spring 1995, at 111)

Transformative mediation: A view of mediation that emphasizes its capacity to transform the character of both individual disputants and society as a whole. Because of its informality and consensuality, mediation can allow parties to define problems and goals in their own terms; consequently, the important role of these problems and goals in the parties' lives is validated. Rather than placing an emphasis only on reaching agreement, transformative mediation focuses on (1) empowerment, by instilling the parties with a greater sense of self-respect, self-reliance, and self confidence, and (2) recognition by engendering acknowledgment and concern for others as human beings. (Bush and Folger, *The Promise of Mediation* 20, 21 [1994])

Trust building: Mediators strive to build trust between parties to reinforce beliefs that commitments and agreements will be carried out. Mediators can make specific interventions that will build trust between the parties and change their perceptions. These techniques include creating situations in which parties must perform joint tasks, vocally identifying commonalities, and facilitating a discussion of their perceptions of one another. (Roger Fisher, *International Mediation: A Working Guide* [1978])

Unbundling (*also known as discrete task representation*): Unbundling offers clients a middle ground between dispensing with lawyers altogether and signing on for full-service representation. In unbundling, the client determines which services will be performed by the client and the extent and depth to which the lawyer will perform the services engaged.

White board (*also known as dry erase board*): Large, erasable boards that are used by parties and the mediator to write down various ideas. Because white boards are erasable, they are particularly useful in brainstorming and formulating settlement proposals. To preserve information written on a white board, it is often necessary for participants to pause and copy down information on pads or flip chart paper.

Zero-sum game: The assumption that negotiations will end up with a winner and loser as a result of both parties trying to get equally valued limited resources. The adversarial paradigm often incorporates a zero-sum approach to negotiation. Assumption of total competition of interests and zero-sum outcomes hinders the potential for creative solutions inherent in situations where parties attribute differing values to the issues. Because trade-offs between issues are possible, when more than one issue is discussed, negotiations often lose their zero-sum game qualities. (Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. Rev. 754, 783–89 [1991]).

8 ROLES OF PEACEMAKING

Adapted from Ury, Getting to Peace, (2000)

1. Teacher
2. Bridge Builder
3. Mediator
4. Arbiter
5. Healer
6. Witness
7. Referee
8. Protector