Weinstein International Foundation
MEDIATING A BETTER FUTURE™

MEDIATION WRITING COMPETITION

CALL FOR ENTRIES

THE WEINSTEIN INTERNATIONAL FOUNDATION is proud to announce the First Annual Mediation Writing Competition. Law students from nine select countries around the world are invited to write a mediation memorandum on behalf of a client who is preparing to participate in the mediation of a litigated dispute.

The top paper will be awarded a cash prize of **$1000**.

For information regarding how to participate, please contact the following Senior Fellows of the Weinstein International Foundation who are leading the Competition in their respective countries: **Ximena Bustamante (Ecuador), Eleni Charalambidou (Cyprus), Sherif Elnegahy (Egypt), Constantin Adi-Gavrila (Romania), Tat Lim (Singapore), Ruslan Mirzayev (Azerbaijan), Nudrat Ejaz Piracha (Pakistan), Giorgi Tsertsvadze (Republic off Georgia) and Fernando Navarro Sánchez (Mexico).** Contact information for the Senior Fellows is listed on the Weinstein International Foundation website. You may also contact **info@weinsteininternational.org**.

Papers will be judged based on persuasiveness, ability to move the dispute to resolution while furthering the client's interests, the tailoring of arguments to the mediation process and the overall quality of writing and presentation.

The papers are strictly limited to 2500 words.

Deadline for entries is April 10, 2021.

$1000 PRIZE FOR BEST PAPER

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International Mediation Writing Competition

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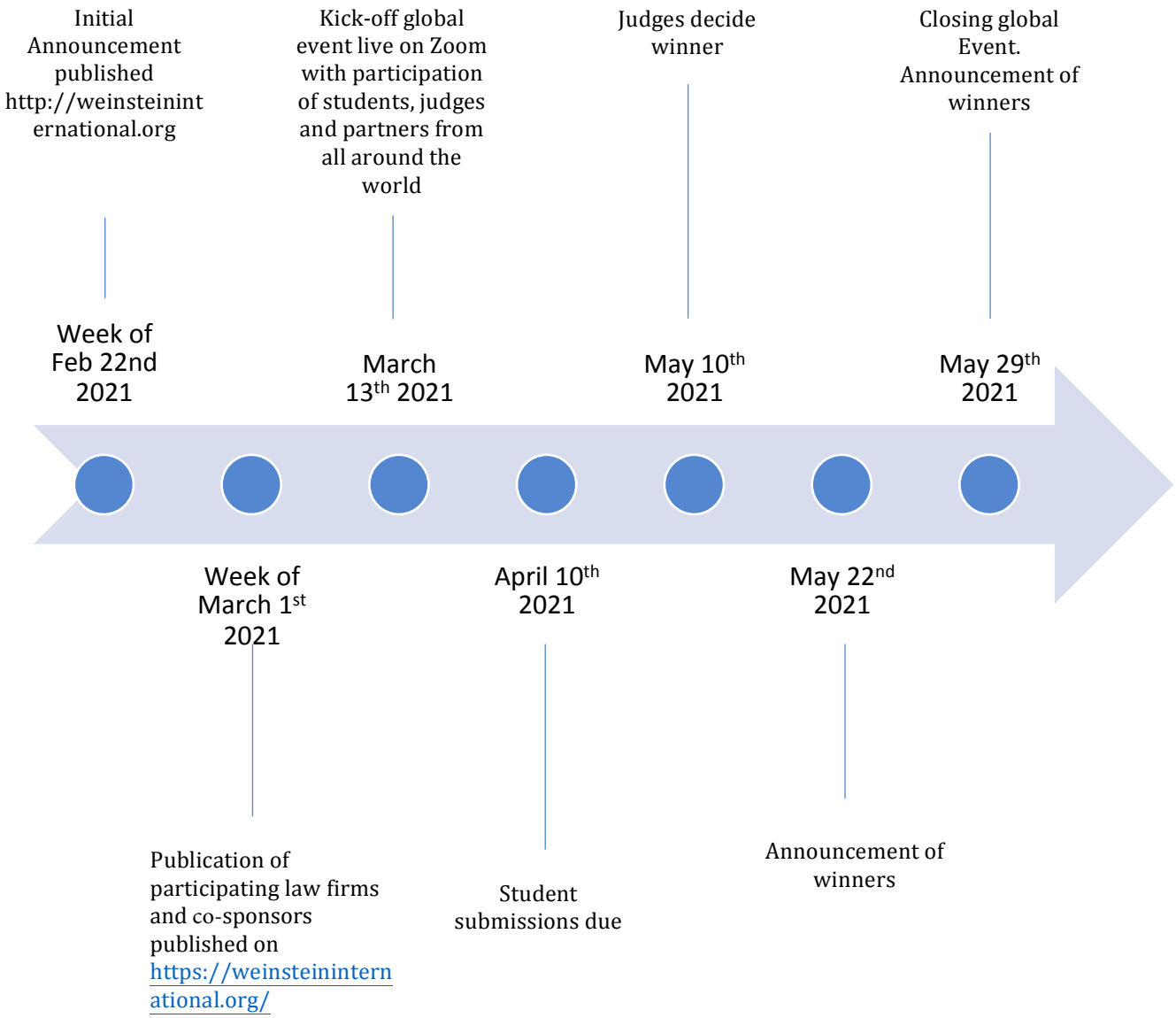

Weinstein International Foundation
MEDIATING A BETTER FUTURE™

International Mediation Writing Competition

INSTRUCTIONS FOR STUDENT PARTICIPANTS

The Weinstein International Foundation invites you to enter our first annual Mediation Writing Competition.

The competition is open to all full-time enrolled law students who are not yet qualified, practicing lawyers, from law schools located in the following select countries around the world: Azerbaijan, Cyprus, Ecuador, Egypt, Mexico, Pakistan, Republic of Georgia, Romania and Singapore.

The competition is intended to increase student interest in mediation, enhance the skill level of advocates in the mediation process and to raise the level of quality for the written memoranda submitted prior to mediation.

To find out more regarding student participation in the Competition, please contact the following Senior Fellows who are leading the competition in their respective countries: **Ximena Bustamante (Ecuador); Eleni Charalambidou (Cyprus); Sherif Elnegahy (Egypt); Constantin Adi Gavrila (Romania); Tat Lim (Singapore); Ruslan Mirzayev (Azerbaijan; Fernando Navarro Sanchez (Mexico); Nudrat Ejaz Piracha (Pakistan); Giorgi Tsertsvadze (Republic of Georgia)**; You can also send an email to **info@weinsteininternational.org.**

Your memoranda must not exceed 2500 words, with one part (at least 60%) to be shared with the other party and the mediator and the other part to be kept confidential between you and the mediator). You may be creative in your writing style but you are not allowed to add facts that are not included in the case.

All entries will be anonymised. Entries will be judged based on criteria that test your ability to marshal facts, law and procedural history effectively, your ability to be a persuasive negotiator without alienating the other side, to suggest ways that the mediator might be able to maximize the likelihood of a successful mediation and, of course, your writing ability.

Memoranda must be submitted by ***April 10th 2021***.

The award for the first-place mediation brief is $1,000.

Weinstein International Foundation
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International Mediation Writing Competition

FACTS AND INSTRUCTIONS

MEMORANDUM

TO: OUR NEW ASSOCIATE

FROM: SENIOR PARTNER

RE: THE FULGORA-HB MEDIATION

DATE: TODAY

Our firm is very pleased to have hired you. You seem like a lawyer with a terrific career ahead of you. The leadership of the firm has great faith in your abilities, and as a result, we have decided to give you a very important task. Your job is to write a mediation memorandum in support of our client Fulgora Motors, whose sole owner is Ava Kenn.

The remainder of this memorandum will describe the background of the case and negotiations to date. It also contains information regarding the dispute resolution protocol described in the contract between our client and Hyderabad Battery Co., the putative defendant in this action.

Do your best work. We have placed our trust in you.

BACKGROUND – THE COMPANY

Four years ago, Ava Kenn formed a team whose mission is to develop a major presence in the upcoming age of the electric vehicle, or "EV." Kenn, our client is a 25 year veteran EV designer, and she brought on board a terrific team of engineers and technicians. The startup venture was named Fulgora Motors (after the Roman god of lightning).

The startup money came from a personal loan of €2 million made by Kenn to the company. Kenn also secured a €15 million business loan. From this money came substantial salaries, facilities and equipment rental fees, and development costs.

THE EU-EV GRANT COMPETITION

The team aspired to get a substantial grant from the European Union, which announced the availability of several billion Euros in incentive money for clean energy initiatives. Three winning electric vehicle (EV) designs would be chosen, each to receive a €50,000,000 award

(25,000,000 per year for two years) in return for a promise to produce at least 1,000 EVs at the end of two years and 1,500 per year for two years thereafter.

According to the terms of the grant, the electric EVs would be distributed initially through a public-private cooperative dealership. Fulgora would receive half of all profits from the sale of the first 4,000 EVs and the remaining money would revert to the European Union. After that, Fulgora would take over the distribution of the EVs and would keep whatever earnings it achieved.

In the EV category, the government program indicated that all entrants would be judged on their entries' affordability, convenience, safety, range without recharging, time to recharge and similar criteria. In addition, the recipient of the grant would have to have the demonstrated capacity to deliver sufficient numbers of EVs to demonstrate the viability of alternative energy vehicles. The criteria specifically called for a fleet of 20 EVs to be made available within 90 days of the announcement of the award of the grant.

CONTRACTING WITH HB FOR BATTERIES

When the Fulgora Motors team was weighing alternatives for power, it considered a variety of batteries. They explored technologies involving expensive lithium-ion elements (which would add more than €10,000 to the price of each EV), nickel metal-hydride batteries ("NiMH" -- like in current hybrids) and found the former to be too expensive and the latter to lack power. The leading contender was a battery produced in India by the Hyderabad Battery Company ("HB"). It was a blend of three battery technologies – the two already mentioned and the more traditional nickel cadmium (or "NiCad").

The batteries were slightly heavier than NiMH batteries but were capable of quicker charging and also facilitated rapid acceleration. The mileage range was less than the best lithium ion batteries but exceeded that of the most popular selling hybrid batteries.

HB supplied three of the batteries in advance of the signing of any contract, so that the Fulgora designers could make a determination of whether to invest their energies in designing around an HB product. In May of last year, they decided it was a go.

Fulgora placed an order for 50 HB "A-Power" batteries to be delivered in November. The contract price was for €100,000.

In the ensuing months, Fulgora refined its design on its prototype EVs and began to focus on building a EV based on the A-Power battery.

THE CADMIUM PROBLEM

However, as fate would have it, news broke that China had substituted cadmium for lead in many of its products intended for export. The "lead paint" and "leaded ingredients" scare of 2008 resulted in the switch. But it seems that cadmium has a higher than tolerable level of inherent radiation, and there began a "cadmium scare" in late 2009. By the end of the year, many countries, including the country we live in, enacted strict regulations limiting the amount of cadmium that could be in any product, the amount that could be imported in total to the country, and the manner in which cadmium-based products would be inspected.

This new regulation has made it near impossible to import sufficient quantities of A-Power batteries to be brought into our nation.

CHANGING BATTERIES

Fulgora contacted HB and discussed the situation with them. HB offered to supply a battery with lower levels of cadmium, but the batteries would rely more on a hybrid NiMH/lithium-ion technology and would be more expensive – approximately €1500 more per battery, for a total price of €3500 per battery (still far less than a pure lithium-ion battery). HB assured FULGORA that the battery size and performance would be sufficiently similar to the A-Power that the development work that went into the Fulgora prototype EV would be useful for the new battery, dubbed "X-Power."

In January of 2010, HB sent a prototype X-Power battery to Fulgora. Fulgora engineers were dismayed to find that several small modifications in size and configuration of the battery had occurred. Terminals were in different places as was the charging interface. Most importantly, the power output had decreased a small amount and recharge time increased slightly.

The new battery resulted in the need for a major retrofit and reconfiguration of the Fulgora prototype.

FAILURE TO SECURE THE GRANT – INITIATION OF THE ADR PROTOCOL

When the new Fulgora prototype was entered into the EU grant competition, it fared poorly. The range was less than the A-Power prototype, and recharging time was increased as was total cost of the EV. Fulgora's prototype did not make the top three, and Fulgora was informed that it would not receive any grant monies. The letter informing Fulgora of this outcome referred specifically to "near-misses with respect to overall price, convenience and range." The Fulgora EV placed fifth in the competition.

Fulgora immediately contacted HB which replied that the X-Power battery was as close to an A-Power battery as feasible, and that it had lived up to its end of the contract modification. As it was in the final stages of shipping 50 X-Power batteries to Fulgora, it expected payment in full within 30 days, as per the contract. HB argued that it was not its fault that the national government in our country had made imports of the A-Power battery impossible. HB also argued that "any scientist would agree that the X-Power battery was an adequate substitute for the A-Power."

Fulgora indicated to HB that it intended to refuse shipment of the new batteries, and to sue for breach of contract. The damages it claimed were the lost money spent on development of the A-Power based prototype and the expected profits it would have received from the first two years of the production of the EV (estimated at €5,000,000). In addition, Fulgora sued for damage to its reputation. The total amount requested as damages was €12,500,000.

The contract between the parties contains a tiered dispute resolution clause. Within 90 days of the initiation of a dispute, the aggrieved party must give notice to the other of its intent to pursue a claim. The parties must then attempt to negotiate a resolution of the claim within 60 days. If that attempt fails, the parties must mediate with a provider named in the contract, and if the mediation results in no resolution, the parties have an additional 90 days to make arrangements for final and binding arbitration under UNCITRAL rules.

THE FIRST ATTEMPT AT SETTLEMENT

Fulgora and HB met right away to attempt to negotiate a resolution. HB demanded payment for the X-Power batteries and disclaimed any responsibility for Fulgora's damages. HB indicated that it would accept a payment of €100,000 in return for a full release of all claims of liability, and it would then waive any claims it had to recover for damage to its reputation as a result of Fulgora's refusal to honor its contract. Fulgora insisted that it was entitled to its entire request of €12,500,000 as all of its efforts had gone for naught, and because its investment resulted in technology that would have won the grant but for HB's failure to deliver a battery similar in function and price to the A-Power.

Fulgora argued at the settlement meeting that the battery was substantially different than the one promised. HB argued that it was as close as possible given the cadmium restrictions. Fulgora's last offer was to accept €11,500,000. HB did not counter-offer and the initial meeting broke up with no agreement.

PREPARING TO MEDIATE

Since the failed attempt at settlement, the parties have contacted a mediator. That mediator has requested that the parties submit a mediation brief, not exceeding 2500 words. The brief should be broken into two sections – a section that contains information that will be shared with the other side, and a section that is confidential information solely for the mediator. The first section should be at least 60% of the total length, with the optional confidential section being no longer than 40%. (We leave it entirely up to you to determine how to structure the memorandum.)

After the mediation was scheduled, but long before the deadline for submission of briefs, HB's lawyers contacted Fulgora and offered to reduce its demand for damages by half if Fulgora would release HB from all claims. Fulgora's lawyers refused and the briefing schedule was set in place.

PRELIMINARY PREPARATION FOR THE MEDIATION

Ava Kenn convened a meeting of her team and they brainstormed some possible ways to resolve the matter.

One would be for HB to purchase the technology Fulgora developed for use of the original A-Power prototype EV.HB could then develop a very good, low priced EV for sale in countries without a cadmium restriction.

In the alternative, HB could repay Fulgora the €5,000,000 it invested in the A-Power technology and could agree to finance an additional €5,000,000 of research and development for a new model, in the hopes that an X-Power based model might fare better in a future grant cycle. (This is highly speculative. There may never be a future grant cycle – given how difficult economic conditions are in the EU these days.)

Another alternative is that Fulgora would accept a flat payment of €6,000,000 and a release of all claims.

Kenn indicated to our firm that these were but three ideas, and she hopes we might be able to come up with others.

CLIENT INTERESTS AND CONCERNS

Kenn has three big concerns:

(1) She is worried about repaying the €15,000,000 bank loan. While she has significant personal resources, she cannot repay that loan herself. She would be destitute if she were required to pay back more than €5,000,000.

(2) She is concerned about her reputation in the scientific community. If the time and money spent on the A-Power prototype comes to nothing, she will have a very hard time retaining and attracting talent for future jobs.

(3) She really wants to contribute in a meaningful way to the reduction of emissions. The failure of the A-Power prototype has made her depressed.

Kenn has asked you to make the best case you can for Fulgora in mediation, but not to be so strident that you cut off all avenues for a possible compromise. Kenn understands that an arbitrator might see the cadmium restrictions as outside of HB's control, and it may even be possible that HB will be able to convince an arbitrator that the elimination of the cadmium from the battery resulted in necessary modifications and that HB's X-Power battery was truly as close as possible to an A-Power as one could create in the absence of cadmium. Because Kenn sees a lot of risk in the arbitration, and because she wants to continue to pursue electric EVs as the place to put her attention and make her mark, she hopes to find a way to settle the claim without having to arbitrate.

Kenn telephoned yesterday to tell us that Fulgora might need to keep a relationship with HB. India is clearly on the rise, and she doesn't want a reputation for being too aggressive. She said that she is open to the idea of working together – maybe even merging or relocating some of Fulgora's operations to India.

She doesn't know if she'll be able to find another reliable source of batteries. The Tesla technology from the USA is far too expensive and competing technology from China is not yet up to her standards. She is still looking at other technologies, but had not found anything suitable as of yesterday.

Kenn was clearly distraught. She stated that "she's a scientist, not a negotiator and certainly not a lawyer," so she is leaving it to you to determine how to approach the mediation – she has even authorized you to alter her demands if you believe that your approach can help her meet her most critical interests. She's looking forward to seeing the memo you produce for the mediator.

THE LAW FIRM'S INTERESTS

Of course, we hope to satisfy our client. We see a bright future in EV technology and if this mediation produces a result that allows Fulgora to flourish, we will consider ourselves fortunate to have such a client in our roster. Meet Kenn's needs and you meet ours.

Use your best judgment and we will stand behind you 100%.

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International Mediation Writing Competition

INSTRUCTIONS FOR JUDGES

On behalf of the Weinstein International Foundation (hereinafter "WIF"), we would like to thank you for agreeing to act as a judge in the first annual WIF International Mediation Writing Competition. This short memo is meant to help guide you through the process of judging entries to the competition.

As a judge, you will be reading a number of short memoranda written by law students who are acting as advocates in a mediation scenario. The memoranda ahould not exceed 2500 words, with a division of the memo into an open part (intended to be shared with the other party) and a closed part (intended to be kept confidential between the mediator and the author). You will be judging the memos according to nine criteria. These criteria (spelled out in more detail in the attached "Criteria for Judges") are:

-Summarizes facts effectively, accurately and completely
-Uses law appropriately (The applicable law is the law that students are taught at their law school)
-Persuades the other side about the strength of the author's claim
-Invites the other party to negotiate in good faith
-Offers a helpful description of negotiation history
-Offers a realistic assessment of the obstacles to settlement
-Proposes useful and workable strategies to help guide the mediator in determining his approach
-Effectively breaks down information between the open part and the closed part
-Is generally well written

Each criterion will be awarded equal weight along a four-point scale, as follows:

POOR (OR MISSING) = 0
FAIR = 1
GOOD = 2
EXCELLENT = 3

The highest score an author may obtain is 27 points.

Your task involves four discrete tasks.
1. Read these instructions in their entirety. Please raise any questions you may have about the instructions before taking any additional steps.

2. Read this year's problem (attached) a few times to get a sense of the scenario and the role of the advocate.

3. Read each entry/memorandum and grade each of the criteria on a copy of the attached "Grading Sheet for Judges" (attached). You need merely to place an "X" or a check in the appropriate box to the right of each criterion.

4. Return completed sheets as indicated according to the specific instructions provided for your local context.

Thank you very much for agreeing to judge this competition. We hope that this event helps raise awareness of the importance of mediation in the world of dispute resolution, and also of the importance of good advocacy in mediation. Your contribution in this competition will turn that hope into reality.

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GRADING SHEET FOR JUDGES

NAME (OR NUMBER) OF PARTICIPANT_____

TOTAL POINTS AWARDED_____

JUDGE'S NAME_____

DATE ENTRY WAS JUDGED_____

	0 points (POOR or MISSING)	1 point (FAIR)	2 points (GOOD)	3 points (EXCELLENT)
Criterion 1: Summary of Facts				
Criterion 2: Use of Law				
Criterion 3: Persuasiveness				
Criterion 4: Invitation to Negotiate				
Criterion 5: Negotiate History				
Criterion 6: Assessment of Obstacles				
Criterion 7: Proposes Mediator Strategies				
Criterion 8: Breakdown between Open and Closed Parts				
Criterion 9: Quality of Writing				

If you have any other comments or feedback for the author, please include it with this form. That feedback will be forwarded to the author but unless you specify otherwise, your name will be omitted from the score sheet and feedback.

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CRITERIA FOR GRADING

CRITERION ONE: AN EXCELLENT MEMO SUMMARIZES FACTS EFFECTIVELY, ACCURATELY AND COMPLETELY

The memo must not exceed 2500 words. Any memo that exceeds the limit should be graded down. An excellent memorandum distills all the important facts down into an easily digested summary, and it does not lose accuracy in the distillation.

CRITERION TWO: AN EXCELLENT MEMO USES LAW APPROPRIATELY

The simulation contains no applicable law. The applicable law is the law that students are taught at their law school. Participants in this competition are invited to do whatever legal research they want and to include relevant law in their memoranda. However, the most effective mediation memos are much lighter on the law than were the memo written for a judge or magistrate called upon to render a decision. The memo should alert the mediator to any relevant rules or laws that the mediator should be aware of, but stops short of being a legalistic argument.

CRITERION THREE: AN EXCELLENT MEMO PERSUADES THE OTHER SIDE ABOUT THE STRENGTH OF THE AUTHOR'S CLAIMS

After reading an excellent mediation memo, the reader is left with the impression that the author is "right" – that is, that she has a strong claim. However, given that mediation is a process in which the author will need to persuade the other negotiator of that "rightness," the argument ought not to be strident or worded in such strong language that the other negotiator will react negatively or feel the need to argue back. An excellent memo is assertive without inviting argument.

CRITERION FOUR: AN EXCELLENT MEMO INVITES THE OTHER PARTY TO NEGOTIATE IN GOOD FAITH

Excellent advocates are keenly aware that they must persuade the other negotiator to say "yes" to a proposal that will come during the mediation. Such an advocate judiciously chooses language that signals a willingness to make concessions in return for compromises of concessions from the other side. Some memos even contain an explicit offer to make a concession if the other side is willing to reciprocate. But even in the absence of such an

explicit offer, an excellent memo is framed in such a way that the opposing negotiator feels more inclined to come to the negotiation as a problem-solving ally, not a legal opponent.

CRITERION FIVE: AN EXCELLENT MEMO OFFERS A HELPFUL DESCRIPTION OF THE NEGOTIATION HISTORY

It is always useful for a mediator to know what attempts at settlement have preceded the mediation. No mediator wants to repeat a failed past tactic or approach. Thus, it is incumbent on the advocates to let the mediator know what the negotiation or settlement history has been in the dispute. If that negotiation history is too self-serving, the mediator is likely to discount or dismiss it. And if the self-serving description is in the Open Part of the memo, it is likely to alienate the other side. An excellent memo summarizes the negotiation history accurately, and portrays prior failures to settle as "no one's fault."

CRITERION SIX: AN EXCELLENT MEMO OFFERS A REALISTIC ASSESSMENT OF THE OBSTACLES TO SETTLEMENT

A mediator needs to determine how he can help move the parties toward settlement. A critical piece of background information the mediator needs is an understanding of what stands in the way of an agreement. Sometimes the obstacle is obvious – for example, where one side denies liability and the other side insists that the defendant is liable. Or where one side values the claim in the tens of millions of Euros and the other values it in the hundreds. However, it is often the case that there are obstacles to settlement that are not immediately apparent to a mediator from the facts or negotiation history – for example where an advocate has lost trust with her client and the client no longer believes the information the advocate brings to him. There are many such examples of hidden obstacles. An excellent mediation memo helps the mediator diagnose the roadblocks that will have to be surmounted before a settlement can be attained.

CRITERION SEVEN: AN EXCELLENT MEMO PROPOSES USEFUL AND WORKABLE STRATEGIES TO HELP GUIDE THE MEDIATOR IN DETERMINING HIS APPROACH

Mediators are greatly helped when participants facilitate the structuring of an effective mediation process. While it is useful for a party to identify obstacles to settlement (see Criterion Six), it is even more useful when the parties then offer their perspective on how to structure the mediation in a way that overcomes the obstacles, exploits common interests and creates a settlement that both parties prefer over further conflict. An excellent mediation memo will contain at least one suggestion about how the mediator might proceed, and sometimes more than one. These strategies ought to arise organically out of the situation, and should not be monolithically biased in favor of the author's position.

CRITERION EIGHT: AN EXCELLENT MEMO EFFECTIVELY BREAKS DOWN INFORMATION BETWEEN THE OPEN (SHARED WITH THE OTHER SIDE) PART OF THE MEMO AND THE CLOSED (CONFIDENTIAL) PART

One of the most important skills in mediation is knowing what to share with one's negotiation counterpart and the mediator, and what to keep between the mediator and one's self. This

skill is important during a mediation, but also in the writing of a pre-mediation memo. Many mediators prefer that the parties write something private in addition to something shared. The private memos often contain information about strategy, about the other side, about aspects of the negotiation history, and perhaps even about settlement targets and obstacles. To the extent that the memo ought to inform the mediator without inflaming the other side, this ca be accomplished by keeping the information confidential.

However, advocates who keep too much information confidential fail to serve their clients' interests. It is the other side who must be persuaded. This means that as much information as possible ought to be in the Open Part of the memo and that the Closed Part is kept to a minimum.

Moreover, the information in the closed part still needs to be accurate and believable. If the author is too one-sided in the Closed Part, the mediator will naturally discount the strength of the author's statements.

A fine balance needs to be struck, but an excellent memo manages to expertly walk the line between shared and confidential information.

CRITERION NINE: AN EXCELLENT MEMO IS WELL WRITTEN

This point ought to be obvious. When an advocate takes the time and exercises the skills required to produce a well-written work, he makes the job of the reader much easier. Well-written works are more persuasive and show the author in the best possible light. When spelling and grammar are perfect, when word choice is creative and appropriate, when sentence and paragraph structure evince care and skill, the product and the argument contained therein are all more likely to do the intended job.